



## Chapter 6

# Public Safety

This chapter speaks to California's ability to effectively deliver public safety services to those who live, work and visit in California. In this instance, "public safety" includes law enforcement services, fire protection and emergency management, victim services and homeland security issues.

The safety of those who live, work and visit in California is among the highest priorities of state government. Sadly, California is no stranger to public safety emergencies. In the recent past, there has been civil unrest; massive fires, earthquakes, and floods that caused the loss of life and property; and, since September 11, there has been a constant unease about terrorism.

Although California suffered no physical damage from the September 11 attacks, recent reports from the federal 9/11 Commission indicated that targets in California and along the entire west coast were included in the terrorists' original plans. After the attacks, an initial list compiled by emergency personnel identified 623 sites as potential targets in California.<sup>1</sup>

California's dams, bridges, international airports, seaports, laboratories, nuclear power plants, critical industrial, economic centers and other landmarks are high on suspected future target lists. Moreover, the U.S. Departments of Defense and Homeland Security, as well as several California departments and agencies are developing ongoing lists of potential targets. The importance of having an established, effective homeland security structure in place has never been greater.

The entire realm of public safety (law enforcement, emergency management, fire protection, victim services) was put under the microscope by the California Performance Review. What follows are the highlights of that examination, including the prescriptions for effective change—change that will help lead California state government into the 21<sup>st</sup> Century and make California a bastion of public safety.

### ***A need to reorganize***

During an emergency, rapid response by public safety agencies is critical. If the service of more than one responding agency is needed, then coordination of personnel, equipment, and other resources is vital in minimizing the loss of life and property. It is imperative that an effective and efficient unified structure be in place to deploy necessary personnel, equipment and resources to maximize the safety of all.

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Unfortunately, that is not how public safety is organized in California state government today. More than 80 state entities have some responsibility for some aspect of public safety, whether it is law enforcement, fire and emergency management, victim services or homeland security issues. Those entities include six constitutional offices, 31 departments under nine agencies, two university systems overseeing 32 police departments, and two commissions. Under “normal” conditions, this structure is confusing, duplicative and inefficient. In an emergency, when hundreds (if not thousands) of responders from different agencies are mobilized, there is no unified command structure in place to oversee operations. It does not lend itself to effective delivery of emergency services when they’re needed most, as the following examples illustrate.

- Although all emergency entities follow the Statewide Emergency Management System model, a unified command structure does not exist. For example, the California Highway Patrol reports to the Business, Transportation and Housing Agency; the Department of Forestry and Fire Protection (which works hand-in-hand with the CHP in all fire emergencies) reports to the Resources Agency, as do the game wardens from the Department of Fish and Game and state parks law enforcement from the Department of Parks and Recreation. Each entity has jurisdictional autonomy and cooperative working relationships must receive approval from each supervising entity. Often, cooperation is lacking, even though all share the same desire to protect the public.

After the September 11 terrorist attacks, CHP personnel immediately went on 12-hour shifts; patrols of the California Aqueduct, dams, nuclear laboratories, bridges, and other infrastructure commenced, all in addition to the CHP’s “normal” operations. Fish and Game wardens, who are fully-trained law enforcement officers who also use watercraft and aircraft in their operations, were sent home.

In January 2001, a disgruntled truck driver drove his semi head-on into the California State Capitol, and the truck burst into flames. Responding agencies (the CHP, federal and local law enforcement, local fire department) initially squabbled over jurisdictional and operational authority, increasing the risk to the Capitol and those still inside.

- Over 30 state departments and boards utilize the classification of “peace officer.” In some departments, these personnel perform an obvious law enforcement function. They are armed, they make arrests, and investigate criminal complaints. Others have more limited powers—they serve warrants and subpoenas, conduct investigations, but are not armed. Still others have the classification, but perform no discernable law enforcement function. Several departments conduct similar types of investigations for similar types of crimes (identity theft and fraud, insurance fraud, etc.) The current system contributes to a bloated, confusing and unresponsive government.



- There is no single communications system in place that allows emergency responders to communicate with each other directly. This can delay effective response and increase the risk to officers, firefighters and other first responders who are on the front lines of an emergency.
- There is no coordinated training for state law enforcement officers, even for those who have full statewide peace officer powers (such as CHP officers, game wardens, Alcohol Beverage Control officers, and state park rangers). Again, this can affect their ability to respond effectively and increase the risk to officer safety.
- There is no coordinated procurement process for equipment and resource purchases. The CHP, for example, purchases hundreds of enforcement vehicles each year. Efficiency would dictate that other law enforcement entities take advantage of the CHP's buying power for vehicles and other law enforcement equipment; however, this is not the case. Other state law enforcement agencies must buy their cars through contracts managed by the Department of General Services. If a department wants to buy vehicles using the CHP's buying power, that department must pay General Services a fee. It should not cost more money to use an existing and more efficient purchasing system.
- To help victims of crime, California established a broad victims' compensation program that helps victims pay for needed services such as mental health counseling, medical costs, and funeral expenses. California also provides assistance to local governments, which includes funding and other assistance for battered women's shelters, rape crisis centers, victim-witness assistance centers, elder abuse advocacy programs and child abuse treatment centers. Unfortunately, the major sources of funding for these programs, which was roughly \$245 million in state and federal funds in Fiscal Year 2002–2003 are spread across many different levels of state government and there is currently no lead agency.<sup>2</sup> This void in leadership has led to a lack of coordination among these funding streams and programs, conflicting and duplicative policies, and an unacceptable level of inefficiency.

### ***A unifying prescription***

The September 11, 2001 terrorist attacks changed the way state government must look at public safety. While California struggles to maintain a state of readiness for any further terrorist action, it must also consider the different responses that might be necessary. The multitude of targets that California presents means that any terrorist plot could involve explosives, resultant fires, biological or radiological hazards and vehicle or infrastructure failures. Current jurisdictional agreements are not conducive to rapid deployment of resources; differing equipment standards and training do not contribute to the efficient use of resources. This new era of public safety demands a bold new approach, a demand that will be met with the creation of a new Department of Public Safety and Homeland Security.

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The Department of Public Safety and Homeland Security will be led by the Secretary of Public Safety and Homeland Security, who will be appointed by the Governor. There will be four divisions within the department: the Division of the California Highway Patrol, the Division of Law Enforcement, the Division of Fire Protection and Emergency Management, and the Division of Victim Services.

The CHP will remain intact and continue with its traffic safety, law enforcement, and state security functions. One change will be the merging of the Office of Traffic Safety (currently an office within the Business, Transportation and Housing Agency) into the CHP.

The Division of Law Enforcement will consolidate other state law enforcement services that are currently provided by eight separate state entities.

The Division of Fire Protection and Emergency Management will consolidate many operations and services now involved with managing state emergencies, specifically those involving fire, earthquakes, floods, and homeland security. It will also provide a single-source program for managing federal and state grants associated with emergency management.

The Division of Victim Services will consolidate services designed to help victims of crime recover, whether it be financial assistance, mental health services, or shelter needs for victims of domestic violence. The division will consolidate victim services funding, programs and compensation, which are currently fragmented and spread across a number of state organizations, into a simplified, efficient and dynamic new division.

As a singular focal point for homeland security issues, the proposed Department of Public Safety and Homeland Security closely models the federal government structure which will assist in command and control functions and in receiving and disbursing federal homeland security funds. As the entity responsible for homeland security planning, it also supports the National Governors Association's recommendations, which (in part) state that a state's homeland security plan should:

- "Identify a chain of command for operational decisions during an emergency involving a threat or act of terrorism, including the roles of the Governor and of the homeland security director;
- "Describe continuity of operations provisions that establish how all levels of state government will function under disaster conditions caused by an act of terrorism; and
- "Identify lead state and federal support agencies by function, such as public health, public safety, and critical infrastructure protection . . . "3



Any emergency response associated with homeland security will certainly involve California's contingent of National Guard troops. That element of California's response will be strengthened through the reorganization as well. The Governor's command and control over the Military Department will be reaffirmed and a new administrative and training relationship with the Department of Public Safety and Homeland Security will be forged.

Although other states have consolidated various public safety services (North Carolina,<sup>4</sup> Maryland,<sup>5</sup> Arizona,<sup>6</sup> Oregon,<sup>7</sup> for example), none have all the components that will be incorporated in this new department. The comprehensive nature of the department will assist local governments and allied agencies with cooperative operational issues, and help the public, as most state public safety services will be managed from one location.

### ***A good first step***

A unifying new department for public safety is a useful first step in improving the delivery of these vital services. There are, however, other public safety issues that fall outside of reorganization that demand the attention of government officials. In addition to reorganization, the following issues were examined:

- Inappropriate use of "peace officer" classification. The Department of Social Services uses this classification, but not as true "peace officers." Recommendations have been made to reclassify these positions to non-peace officer status.
- Functions related to law enforcement information analysis and infrastructure protection assessment are now spread throughout several state entities. Many of these separate functions are underutilized due to inadequate funding and other administrative limitations. The ability to effectively analyze information flowing from local to state to federal (and vice-versa) authorities is critical to maximizing homeland security. To improve this capability, a recommendation has been made to have the Department of Public Safety and Homeland Security establish an Office of Information, Analysis and Assessment that reports directly to the department secretary.
- Medi-Cal fraud is a continuing drain on state financial resources. The Department of Health Services' Medi-Cal Fraud Investigations Branch is being challenged by several issues, including the disproportionate assignment of investigators to the number of cases, lack of required ongoing training for investigators and oversight of a law enforcement function by non-law enforcement personnel. There is justification for moving this law enforcement element to the Division of Law Enforcement in the proposed Department of Public Safety and Homeland Security.
- California's response to disasters and other emergencies is based upon the standardized Emergency Management System and the Emergency Services Act. Often, emergency agencies respond to incidents prior to an official declaration of emergency, taxing

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already limited resource availability and funding. The delays in reimbursements for these deployments dull the “cooperative spirit” that is often vital in an effective, early response. To help ease this strain on resources, a recommendation has been made to establish a contingency fund that the Office of Emergency Services can use to ease the burden on responding agencies prior to an official declaration of emergency.

Preventing new disasters by mitigating the causes of previous incidents is a crucial aspect of emergency management. Hazard mitigation programs are now spread across state entities, each tasked with a specific hazard. It is a piecemeal approach creating inefficiencies in program administration, acquisition of federal grant funds, and confusion among various stakeholders. A recommendation has been made to create a Hazard Mitigation Advisory Council to coordinate existing hazard mitigation programs and to develop a statewide hazard mitigation strategy.

- The California Public Employees’ Retirement System (CalPERS) uses investigators to investigate fraudulent disability claims. Current law, however, hinders their ability to investigate and prosecute these cases. Also, there is inconsistency with laws governing other state agencies’ anti-fraud units. A recommendation has been made to amend existing statutes to help CalPERS investigate and ultimately prosecute disability fraud.
- By law, only the California Department of Justice (DOJ) can investigate and prosecute fraud by Medi-Cal providers (physicians and pharmacies). In reality, however, most of the investigative work is done by the Department of Health Services (DHS) under the guise of “preliminary investigations,” before being referred to DOJ. This results in the forfeit of more than \$1.6 million in federal reimbursements. A recommendation has been made to direct DHS to develop criteria through a Memorandum of Understanding with DOJ that allows for the earliest possible transfer of fraudulent Medi-Cal provider claims to DOJ.

## **Conclusion**

The current structure of California government, as it relates to public safety and homeland security, is not helpful in ensuring the safety of all who live, work and visit our state. There is a morass of agencies, departments, boards and commissions that have their hands in some aspect of public safety. This creates confusion among the public; contributes to a lack of coordination in the delivery of services; is a root cause of an inability to communicate between public safety entities; results in a lack of standardized training; allows for duplication of efforts, roles, and responsibilities; makes government more expensive (in some cases fiscally irresponsible) and, it fosters an unresponsive bureaucracy.

All this has occurred before; for example, in the Los Angeles riots in 1991, there was no interoperability between different law enforcement agencies and command and control functions were incoherent, creating delays in decision making. During the Loma Prieta





earthquake in 1989, there were debilitating jurisdictional issues between state and local agencies. All of these occurrences were unacceptable.

To create a 21<sup>st</sup> Century government in America, the status quo must change. The Department of Public Safety and Homeland Security is a bold first step in making public safety a well-developed, coordinated, service-oriented and efficient governmental operation. Law enforcement services will be consolidated from eight different governmental bodies into two; fire and emergency management services and homeland security will combine nine entities into one; and victim services will be merged into one cohesive structure from three separate bureaucracies.

During an emergency, all of the state's emergency resources must be ready to respond when and where they are needed. This capability is necessary to avoid incidents such as the fires of October 2003, the most devastating wild land fire disaster in the state's history. Over 739,397 acres burned; 3,631 homes, 36 commercial properties, and 1,169 outbuildings were destroyed. There were 246 injuries, and 24 fatalities (including one firefighter). At the height of this conflagration, 15,631 emergency personnel were assigned to manage this incident.<sup>8</sup>

Further, it makes no sense to send a viable law enforcement group home, as game wardens from the Department of Fish and Game were on September 11. Their aircraft and watercraft, along with patrol personnel, would have been better used protecting waterways and other possible terrorist targets. Using all available fully-trained peace officers to help protect the public and state assets is a vital part of California's homeland security strategy; this concept, however, is not always put to good use.

Examples of inefficiency are not hard to find. It is not an efficient use of personnel to have state park rangers (peace officers) picking up trash in state parks and historic monuments or simply passing out brochures at campground entrance gates; their training and expertise make them much too valuable a resource for these tasks. During a major fire or flood, when vital supplies are needed in different parts of the state, it is no help when those supplies are delayed only because two different departments could not or would not work together to accomplish this simple task. Creating the Department of Public Safety and Homeland Security will put a stop to these inefficiencies.

California is no stranger to statewide emergencies, whether they stem from natural causes or from human hands. The threat of terrorism has only added to that burden. It increases the need for a comprehensive and coordinated capacity to respond quickly and with efficiency and effectiveness. The reorganization of public safety services is necessary and it responds to the Governor's commitment to restructure, reorganize and reform state government to make it more responsive to the needs of its citizens and business communities.

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Consolidating public safety functions also responds to the demands of the public. The majority of citizen input concerning public safety during the initial phases of the California Performance Review centered on consolidating public safety functions in state government. There is public support for making positive change that will improve safety without adding to California's existing financial crisis. The changes described in this chapter put public safety first and help maintain California's position as a leader in innovation and a representative of a true 21<sup>st</sup> century government.

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## Endnotes

- <sup>1</sup> *California Anti-Terrorism Information Center Vulnerability Assessment*, 2002.
- <sup>2</sup> *California State and Consumer Services Agency, Strengthening Victim Services in California: "A Proposal for Consolidation, Coordination, and Victim-Centered Leadership"* (Sacramento, California, November 2003), p. iii.
- <sup>3</sup> *National Governors Association: NGA Center for Best Practices, "Volume Two: Homeland Security: A Governor's Guide to Emergency Management,"* 2002.
- <sup>4</sup> <http://www.nccrimecontrol.org/whynorthcarolinaneedsccps.htm> (last visited June 14, 2004).
- <sup>5</sup> *Report of the Commission on Structure and Efficiency of State Government*, Marvin Mandel, chairman, State of Maryland, December 8, 2002.
- <sup>6</sup> <http://www.dps.state.az.us/about/history/default.asp> (last visited June 14, 2004).
- <sup>7</sup> <http://www.osp.state.or.us/> (last visited June 14, 2004).
- <sup>8</sup> *Governor's Blue Ribbon Fire Commission, "Report to the Governor,"* April 2004.





# Creating a Department of Public Safety and Homeland Security

## **Summary**

In California, authority and responsibility for public safety—law enforcement, fire and emergency management, homeland security, and victim services—are divided among more than 80 separate state entities. This creates confusing command structures and causes miscommunication and inoperability between entities. The state government entities responsible for public safety should be consolidated into a single Department of Public Safety and Homeland Security. The new department would have better command and control structures, improved communication and response to emergencies, and reduced operational costs.

## **Background**

California provides a variety of public safety services, including law enforcement, fire and emergency management, homeland security and victim services. These public safety services are scattered throughout state government. Counting every state board, commission, agency and department, more than 80 different California state entities perform or administer public safety services. Those entities include six constitutional offices, 31 departments under nine agencies, two university systems overseeing 32 public safety departments, and two boards or commissions.

In other states, the responsibility for public safety has been consolidated under a single public safety or criminal justice agency. Alaska, Maryland, Minnesota, New York, North Carolina, Oregon and Texas already have, or are planning, such consolidations.<sup>1</sup>

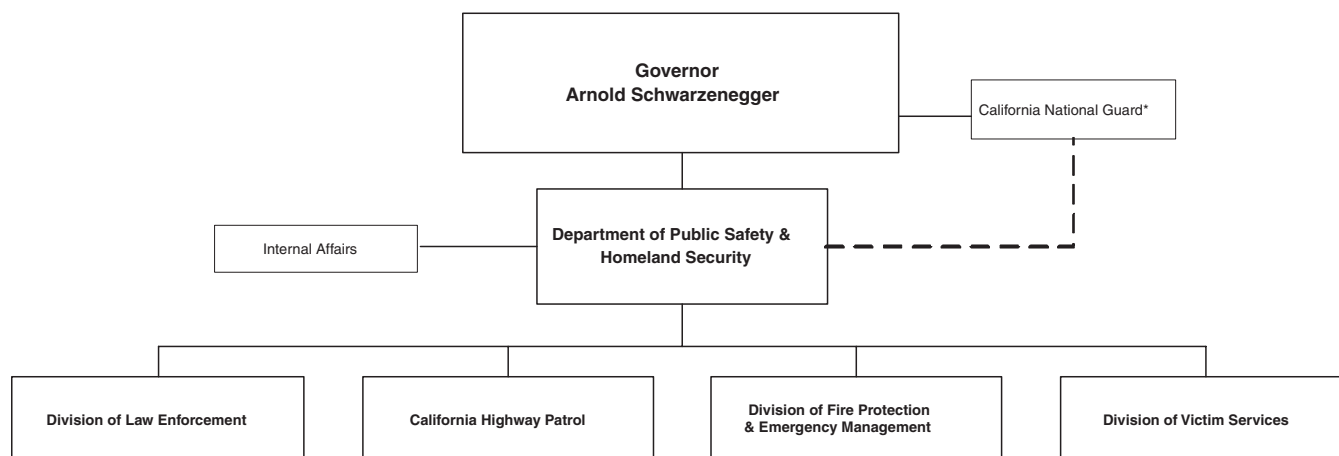
## **Consolidation improves safety and efficiency**

Such consolidations provide a number of benefits. They decrease the number of entities providing public safety services, thus creating a clearer and stronger chain of command—a vital necessity during emergencies. They also create efficiencies and cost savings by eliminating overlap and making possible the most efficient use of resources. Information sharing improves as well, not only within state government, but between the state and local and federal agencies, and with the people of California.

Threats to the United States and to California have shaped a new reality requiring a strong public safety command structure, effective coordination, and improved communication and information sharing. A single Department of Public Safety and Homeland Security (DPS&HS) containing the resources necessary to prevent or respond to emergencies and threats to homeland security would be an important and much needed improvement.

Exhibit 1 illustrates the proposed organization of the new DPS&HS, which will have four divisions: Law Enforcement, California Highway Patrol, Fire Protection and Emergency Management, and Victim Services.

**Exhibit 1**  
**Department of Public Safety and Homeland Security**  
**Organization Chart**



\*Dashed line for California National Guard denotes coordination relationship. Command and control remains with Governor.

***California military department (California National Guard)***

The California National Guard (CNG) would continue to operate outside of DPS&HS, however, channels of communication would be streamlined for more efficient communication and information sharing between DPS&HS and CNG. The Governor will maintain direct control over CNG and the director of the new department could communicate directly with the National Guard on a regular basis for administrative coordination.

***Consolidating homeland security functions in DPS&HS***

In response to the attack on the United States on September 11, 2001, the federal government reorganized its homeland security functions into a central department, the Department of Homeland Security. The California Office of Homeland Security was established on February 7, 2003.<sup>2</sup> It is responsible for coordinating security activities throughout California, as well as implementing and overseeing management of initiatives to prevent terrorist attacks and reduce California's vulnerability to terrorism. It is also responsible for minimizing the damage from terrorism and recovering from any attacks that do occur. In addition, it is the State Administering Agent for federal homeland security grants, and the primary state liaison with the federal Department of Homeland Security.



Folding the functions of the California Office of Homeland Security into a Department of Public Safety and Homeland Security directly responsible to the Governor would greatly enhance homeland security efforts. Homeland security threats must be detected quickly and require effective coordination and quick action. This function belongs in one department with the authority to coordinate law enforcement, fire and emergency management, and emergency preparedness and response capabilities.

Moreover, threats to public safety and security must be assessed quickly and relevant information delivered rapidly and securely to operational forces that can prevent, deter, preempt or respond to threats.

### ***Organization of the Department of Public Safety and Homeland Security***

#### ***Department administration***

The Secretary of the new department would be appointed by and report directly to the Governor. In addition to providing public safety services, the department will include an office for grant administration. Grant management will be done by each division respective of their core competencies.

#### ***Law enforcement liaison function***

The Secretary of DPS&HS will also serve as the Governor's Law Enforcement Liaison. The Secretary would serve as the Governor's advisor and representative on all public safety issues and would act as the state's public safety representative in dealing with local, federal, and international jurisdictions and agencies. In the past, this function was performed by the director of the former Office of Criminal Justice Planning (OCJP). With the dissolution of OCJP, there is a need for reviving the function.

#### ***Homeland security***

Homeland security is a function that would be shared by the entire department as part of its mission. All divisions would cooperate and communicate to strengthen California's homeland security preparation and response.

#### ***Office of Internal Affairs***

The Office of Internal Affairs within the new department would be responsible for conducting all internal investigations. The administrator of Internal Affairs would report directly to the Secretary of the new department.

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## ***The four divisions of DPS&HS***

### ***Division of Law Enforcement***

The Division of Law Enforcement would provide an integrated approach to enforcing all laws and investigating all crimes that occur under the new department's jurisdiction. It would consolidate redundant state services and provide services to locations where they are currently lacking. Creating a Division of Law Enforcement in the new department would ensure consistent training, equipment cost savings, increased professionalism, a higher quality of service, and more efficient service delivery. It would also improve relationships with allied agencies.

### ***California Highway Patrol***

In addition to the traffic and highway patrol functions it currently serves, the California Highway Patrol (CHP) would serve as a statewide training facilitator to provide consistent law enforcement training for the new department, as well as allied agencies when requested. Furthermore, the procurement procedures used by CHP would allow the entire department to take advantage of single-source purchasing power for vehicles and related law enforcement equipment.

### ***Division of Fire Protection and Emergency Management***

Consolidating all fire and emergency management resources in a single division would allow for better emergency planning and improve response efficiency and communication during emergencies. Having a single division responsible for fire and emergency response resources would help ensure that emergency planning is being coordinated statewide and that emergency management plans are consistent for all emergency responders. Homeland security plans could also be coordinated with all responders. The Division of Fire Protection and Emergency Management would increase the quality of firefighting and emergency management in the state and allow state personnel to better respond to incidents and become more disaster resistant.

### ***Division of Victim Services***

Consolidating victim services would provide the state with a single lead agency on crime victims' issues and improve coordination at the state level. The new Division of Victim Services also would provide clear leadership and a unified vision on victims' issues and increase avenues for collaboration among public and private victim service providers. It would improve communication among advisory bodies, providing a conduit for victim and service provider input on statewide issues involving victims of crime. In addition, creating the new division would maximize the state's collection of restitution and acquisition of state and federal funds. Finally, it would allow for development of consistent criteria for awarding grants and evaluating programs while coordinating the distribution of funds to the local level.

**Recommendation**

**The Governor should work with the Legislature to enact legislation creating the Department of Public Safety and Homeland Security.**

The following departments or functions are identified as being reorganized under the new DPS&HS:

- California Highway Patrol;
- California Office of Traffic Safety;
- Department of Alcoholic Beverage Control;
- Department of Consumer Affairs, Contractor's State License Board, Enforcement Unit;
- Department of Consumer Affairs, Dental Board, Enforcement Unit;
- Department of Consumer Affairs, Division of Investigations;
- Department of Consumer Affairs, Medical Board, Enforcement Unit;
- Department of Developmental Services, Office of Protective Services;
- Department of Fish and Game, Enforcement Branch;
- Department of Forestry and Fire Protection;
- Department of Health Services, Battered Women's Shelter Program;
- Department of Motor Vehicles, Investigations Division;
- Department of Parks and Recreation, Public Safety Branch;
- Department of Social Services, Disaster Section;
- Department of Toxic Substance Control, Criminal Investigations Branch;
- Department of Water Resources, Division of Flood Management and Division of Safety of Dams;
- Emergency Medical Services Authority;
- Office of Emergency Services;
- Office of Homeland Security;
- Victim Compensation and Government Claims Board, Victim Compensation Program; and
- California State Fair Police Department.

**Fiscal Impact**

Under this proposal, legislation will be enacted creating the Department of Public Safety & Homeland Security. As a result, 21 departments, boards or specific divisions within existing departments will be consolidated. The departments and functions to be consolidated under DPS&HS will come intact with their respective personnel and appropriate budget share. It is anticipated that any positions needed to support the newly created office of the Secretary will become available as a result of the efficiencies generated by the consolidation. This includes the resources needed to support the oversight office for grant administration. Therefore, new General Fund monies will not be needed to support additional personnel years (PYs).

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The proposed budget for Fiscal Year 2004–2005 includes \$1.968 million in federal funds for 13 PYs in support of the recently created Office of Homeland Security. This analysis assumes the continuation and transfer of this Office to the new DPS&HS, including resources appropriated through the budget process.

During the initial phase (first year) of establishing DPS&HS, it is anticipated that additional funds will not be needed for any personal staff relocation costs. Eventually, dependent upon the configuration of the Office of Internal Affairs, it may be necessary to transfer an as yet undetermined number of staff to Sacramento.

To the extent that, in the future, the department's executive and administrative staff is physically housed in the same location, there will be costs associated with the relocation of office operations. It is anticipated that during the initial consolidation phase, these relocation costs will be minimal. It is also anticipated that staff will be consolidated and co-located related to the Division of Victim Services. The moving costs for these 42 staff are estimated to be \$223,000.

Although savings are anticipated as a result of efficiencies related to this consolidation proposal, they are, as yet, undetermined. The consolidation of administrative functions, the elimination of overlapping operations in the delivery of public safety services and the corresponding reduction in positions through attrition should result in savings. However, the net fiscal impact of this proposal is unknown.

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## Endnotes

<sup>1</sup> *State of Alaska, Department of Public Safety*, <http://www.dps.state.ak.us/> (last visited June 11, 2004); and *State of Maryland, Commission on the Structure and Efficiency of State*, [http://www.dbm.maryland.gov/DBM\\_Search/MD\\_GOV\\_Other/MCFinalReport.pdf](http://www.dbm.maryland.gov/DBM_Search/MD_GOV_Other/MCFinalReport.pdf) pp. 39-43 (last visited June 11, 2004); *State of Minnesota, Department of Public Safety*, <http://www.dps.state.mn.us/> (last visited June 11, 2004); and *State of New York, Division of Criminal Justice Services*, <http://criminaljustice.state.ny.us/crimnet/about.htm> (last visited June 11, 2004); *State of North Carolina, Department of Crime Control and Public Safety*, <https://www.nccrimecontrol.org/index.cfm?a=> (last visited June 11, 2004); *State of Oregon, Department of Public Safety and State Police*, <http://oregonstate.edu/dept/security/> (last visited June 11, 2004); and *State of Texas, Texas Department of Public Safety*, <http://www.txdps.state.tx.us/overview/> (last visited June 11, 2004).

<sup>2</sup> *Governor's Executive Order D-67-03*.





# Consolidate Law Enforcement Functions to Ensure Public Safety and Homeland Security

## **Summary**

More than 30 state departments and boards have employees classified as “peace officers.” Some of these peace officers are employed in large public safety agencies critical to the state’s homeland security efforts, while others are employed by smaller, non-public safety agencies. Peace officers performing similar duties for different departments receive inconsistent training and have varying resources. To maximize resources and provide better law enforcement services to the people of California, the Governor should reorganize state government and align its law enforcement functions.

## **Background**

Public safety and homeland security require the utmost coordination and communication in order to prevent the loss of lives and reduce property damage. There are, however, more than 30 state departments employing peace officers or administering public safety, law enforcement, emergency management and homeland security functions.<sup>1</sup> These officers represent multiple agencies with duplicative, uncoordinated, and overlapping services. This scenario is costly and creates inefficiencies among state, local and federal governmental agencies, especially when there is a significant law enforcement emergency. Its very structure creates, and results in, poor communication and coordination among state law enforcement entities.

## **Fragmented command structure and lack of interoperability**

California state law enforcement officers do not routinely use a unified command structure because they do not regularly communicate or train with one another. This leaves California particularly vulnerable to homeland security threats because its disjointed communication structure creates gaps that can be exploited. It also results in an inefficient use of state law enforcement resources. For example, the California Highway Patrol (CHP) may be deployed to protect a potential target, requiring significant officer overtime. This need for overtime could be avoided if CHP was able to use other state peace officers.<sup>2</sup>

The lack of combined training can be particularly dangerous in times of emergency, when multiple state peace officers may need to respond to a particular event. For example, peace officers from various state agencies have different and conflicting operating procedures, which may add to an already chaotic situation.

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### ***Lack of consistent training and standardized equipment***

Every peace officer in the state must complete a certified basic training course.<sup>3</sup> As a result, at one time or another, the state has had at least five state training academies providing similar training to state peace officers. This is in addition to independent training academies used by state agencies to train peace officers. Peace officers are also required to have specialized training covering a variety of law enforcement activities specific to their duties. For example, there are special training courses for firearms, tear gas, batons, drug-recognition and investigative techniques. These training courses are also provided to state peace officers by numerous training facilities scattered across the state. This leads to inconsistent training, which results in inefficiencies, especially when officers and investigators from multiple departments need to work together.<sup>4</sup>

Peace officer equipment also varies from one agency to another. For example, state peace officers use different firearms, protective vests, handcuffs, vehicles and two-way radios. The lack of standardized equipment results in different training needs, as each officer is often required to obtain specialized training in the use of the equipment.<sup>5</sup> Because different equipment is purchased by multiple agencies, the state is unable to take advantage of lower prices through bulk purchasing.

The lack of standardized equipment can endanger peace officers. For example, incompatible two-way radio systems prevent officers from communicating with one another, which can be particularly dangerous in times of emergency.<sup>6</sup>

Having differing types of equipment increases maintenance costs too. Each agency using a particular brand and model of firearm may need a gunsmith to service them. The state, therefore, employs multiple gunsmiths who specialize in different firearms. This also applies to vehicles.<sup>7</sup> Different law enforcement vehicles require different mechanics and parts, resulting in inefficient use of state resources.

The lack of standardized equipment and training can also hinder the state's ability to defend its law enforcement actions in court. A peace officer's use of equipment is often the subject of court proceedings. Frequently, evidence is introduced explaining how the equipment is intended to be used, as well as any special features of the equipment. This evidence is presented through expert witnesses. The state's use of multiple types of firearms, for example, results in the need for multiple experts. If all state peace officers used the same standard equipment, the need to use multiple experts would diminish. The same could be said for standardizing state law enforcement policies and procedures such as those governing officers' use of force, discrimination, and internal affairs, which are also frequently the subject of criminal and civil litigation.<sup>8</sup>



### ***Inefficiencies and inequities in state investigations***

The state has many investigators employed in a variety of state agencies. This leads to an inequity in the manner in which the state enforces its laws. For example, one agency may aggressively pursue a fraud allegation, referring it for criminal prosecution. Another agency investigating a similar fraud allegation may choose to pursue administrative sanctions. In addition, having state investigators decentralized inhibits the state's ability to effectively prioritize its cases.<sup>9</sup>

### ***Evaluating state law enforcement functions***

The California Performance Review, Public Safety Team, reviewed the law enforcement functions of each state department and board employing peace officers. The review specifically excluded the Department of Justice and other law enforcement personnel who report to constitutional officers, as they are beyond the scope of the Governor's constitutional authority to reorganize state government.

Each department and board was evaluated based on a variety of factors to determine which law enforcement functions should be recommended for consolidation within the proposed Department of Public Safety and Homeland Security. Some of the factors considered include the following:

- The scope of the department or board's law enforcement responsibility;
- The statutory peace officer authority granted to the officers;
- The functions performed by the peace officers;
- The number of investigations, criminal filings and arrests made by the department or board;
- Funding dedicated to law enforcement functions and potential savings from consolidating them with other similar functions; and
- Political and stakeholder considerations.

The following departments and law enforcement functions were identified as either critical to meeting the state's homeland security needs or represented law enforcement that would benefit most from being consolidated within a public safety agency.

### ***California Highway Patrol***

The mission of the CHP is "to provide the highest level of safety, service and security to the people of California and to assist governmental agencies during emergencies when requested."<sup>10</sup> This mission is accomplished through a variety of programs related to traffic law enforcement, general law enforcement, homeland security and assistance to local and other allied law enforcement agencies.

CHP was founded in 1929 as a statewide traffic law enforcement agency. At that time, it provided a much-needed consistent, statewide approach to traffic safety and traffic law enforcement.<sup>11</sup> Today, CHP is recognized worldwide as a leader in traffic safety and in traffic

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law enforcement. Its traffic safety responsibilities include a host of programs that impact every driver utilizing California's roadways.<sup>12</sup> Some of these include the following:

- CHP is a recognized expert in collision investigation and collision reconstruction;
- It regulates and enforces laws pertaining to commercial vehicles and the commercial vehicle industry;
- It is a recognized leader in efforts to prevent incidents of driving under the influence of alcohol or drugs;
- It has statewide responsibility in coordinating programs to reduce the incidence of vehicle theft; and
- CHP's traffic safety programs generate impressive results. For example, in 2002, CHP officers investigated more than 402,000 traffic collisions, arrested about 2.4 million violators, assisted more than 1.5 million motorists, and flew more than 5,500 search and rescue missions.<sup>13</sup>

The capability of CHP to assist local law enforcement is an important part of its mission. This assistance takes a variety of forms, including the following:

- As a partner in California's mutual aid system, CHP responds quickly and with force to all requests for emergency assistance from local police or sheriff departments;
- CHP works with local police departments to help lower their major crime rates. With CHP focusing mainly on traffic law enforcement within city jurisdictions, it allows local police to focus on major criminal activity. In the city of East Palo Alto, for example, their homicide rate in 1992 was the highest in the nation. After assisting the East Palo Alto Police Department for a year, the number of homicides dropped by 86 percent;
- CHP also works with local law enforcement in providing security for planned events that pose a potential risk to public safety. Major demonstrations, festivals and other localized public events often tax local resources beyond their capacity. CHP assistance provides a safety-net and helps ensure public safety;
- CHP helicopters and fixed-wing aircraft often participate in joint enforcement and rescue operations. In 2003, CHP aircraft flew 554 emergency medical missions and saved 84 lives; and<sup>14</sup>
- CHP works with local law enforcement in activating America's Missing: Broadcast Emergency Response (AMBER Alert) messages throughout the state and across the country, when requested by investigating jurisdictions.<sup>15</sup>

Training and equipment procurement issues are handled at the department level and CHP has an extensive professional training program for all its officers. It uses a 27-week, live-in academy program for new officers. It maintains a strict ongoing training curriculum for veteran officers, to comply with all state mandated training requirements. The department does not have to outsource any training needs; it has the facilities and personnel needed to satisfy all training issues.<sup>16</sup>



The size of CHP allows it to procure its own equipment needed for its officers. It purchases officer safety equipment for more than 7,000 uniformed personnel. It has staff who maintain and test safety equipment prior to its use by CHP officers. The CHP also routinely tests equipment and supplies, such as ammunition and firearms for quality.<sup>17</sup>

CHP manages its own vehicle fleet. Each year, CHP purchases hundreds of enforcement and specialty vehicles through its own contract with vendors. It develops the specifications each vehicle type needs to possess and “builds” each vehicle onsite with the necessary enforcement, electrical, and safety equipment.<sup>18</sup>

The events of September 11<sup>th</sup> dramatically changed CHP’s statewide law enforcement presence. Immediately after the attacks, then-Governor Davis ordered the CHP to secure and patrol vital elements of California infrastructure: nuclear laboratories, the California Aqueduct, various dams, seaports, major bridges, and the state’s electrical power grid. Those responsibilities continue today.<sup>19</sup> Other homeland security responsibilities include the following:

- CHP is a member of every Federal Bureau of Investigation Joint Terrorism Task Force, which are located throughout the state;
- It is a member of the Nuclear Transport Working Group, which is responsible for planning associated with the transport of nuclear waste to sites in New Mexico and Nevada;
- It is a key presence in the California Anti-Terrorism Information Center, which oversees communications between local, state, and federal authorities and suspicious individuals or incidents that might be related to terrorist groups; and
- It administers the state’s bio-terrorism training and related emergency incident response programs. Specifically, CHP evaluates new technologies intended to prevent commercial vehicles that are transporting fuel or other hazardous materials from being stolen or hijacked. It also studies new methods for inspecting commercial vehicles for the presence of unauthorized radioactive material.<sup>20</sup>

### ***Department of Motor Vehicles peace officers and enforcement/investigation functions***

The Department of Motor Vehicles (DMV), Investigations Division, reports to the Office of the Director. The mission of the Investigations Division is to protect and serve the public interest and maintain the integrity, security, and reliability of the department’s data, services and products.<sup>21</sup> The division is to accomplish its mission through a variety of activities. For example, the division is to provide consumer protection through the enforcement of laws, rules and regulations; improve public safety through enhanced detection and prevention of fraud and counterfeiting; and educate the public, licensees, department employees, and the law enforcement community on laws, consumer protection and public safety issues.

In Fiscal Year 2002–2003, the Investigations Division had 246 positions designated as peace officers.<sup>22</sup> These include line officers, supervisors, and managers. Division investigators

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conduct complex criminal, administrative, and civil investigations involving licensing, personal identification, and registration documents issued by DMV. They also investigate consumer complaints filed against DMV occupational licensees such as automobile dealers and auto dismantlers. They investigate claims of identity theft, fraud, DMV-related computer crimes involving counterfeiting, illegal computer access or sale of personal information stored by DMV and DMV employee misconduct. Other investigator duties include conducting vehicle identification procedures, providing fraud document detection training to DMV employees and allied agencies as well as mutual aid to allied agencies and providing security and protection services for DMV employees and property in cases of emergency or threat.<sup>23</sup>

The division opened 17,702 cases, generated 802 criminal filings, issued 381 citations and made 326 arrests in FY 2002–2003.<sup>24</sup>

### ***Department of Alcoholic Beverage Control***

The mission of the Department of Alcoholic Beverage Control (ABC) is to administer the provisions of the Alcohol Beverage Control Act in a manner that fosters and protects the health, safety, welfare, and economic well-being of the people of the state.<sup>25</sup> ABC annually investigates about 13,000 applications for licenses to sell alcoholic beverages and reports on the moral character and fitness of applicants and the suitability of premises where sales are to be conducted. ABC has investigators who are peace officers empowered to investigate and make arrests for violations of the Business and Professions Code that occur on or about licensed premises.<sup>26</sup> Investigators are further empowered to enforce any Penal Code provisions statewide.<sup>27</sup>

In FY 2002–2003, ABC peace officers arrested or issued citations to 3,486 people and made 1,010 joint arrests with federal, state and local law enforcement.<sup>28</sup>

The mission of ABC is dependent upon local law enforcement. Every peace officer and every district attorney in this state is required to enforce the provisions of the ABC Act.<sup>29</sup> Local and state officers have the authority to conduct inspections of ABC-licensed premises. This includes state peace officers from the Department of Justice, CHP, university police departments and state park rangers.<sup>30</sup>

ABC peace officers make arrests for a variety of crimes involving alcohol or drugs and other crimes committed in their presence. They also conduct joint investigations with CHP officers and the California Department of Justice. ABC peace officers perform a variety of homeland security functions too. For example, they have assignments with the California Anti-terrorism Task Force, the Federal Bureau of Investigation's Joint Terrorism Task Force and the U.S. Homeland Security Task Force. Consolidating ABC peace officers into the proposed Department of Public Safety and Homeland Security will enhance the ability of all the state law enforcement agencies to complete their mission and serve the public.<sup>31</sup>



**Department of Fish and Game peace officers and law enforcement functions**

The Department of Fish and Game (DFG) has employed peace officers (game wardens) to enforce state fish and game and environmental laws since 1870. Their primary law enforcement mission is to enforce the state's Fish and Game Code and regulations created by the Fish and Game Commission.

In the past, their primary duty was the enforcement and/or apprehension of hunting and fishing law violators. Today, they are the leading law enforcement personnel for complex environmental investigations relating to oil and pollution spills into state waters, public safety wildlife incidents and wildlife habitat enforcement as well as general public safety.

Game wardens have full peace officer authority and as such their primary duty is ensuring public safety.<sup>32</sup> The law enforcement branch of DFG utilizes a wide range of special equipment, including: 4-wheel drive patrol vehicles, patrol boats for marine and freshwater patrol, fixed-wing aircraft, all-terrain vehicles and snowmobiles. They are the primary state law enforcement officers patrolling rural portions of the state where there is little or no other law enforcement presence. While on patrol, wardens may be required to enforce other general laws and make arrests involving drugs, drunk driving and other crimes involving public safety whenever they are encountered.<sup>33</sup>

DFG wardens have been assigned to homeland security missions, particularly air and sea patrol, since September 11, 2001.<sup>34</sup> Game wardens routinely train and work alongside U.S. Coast Guard law enforcement and rescue personnel in patrolling all of California's major ports, harbors and waterways.<sup>35</sup> Game wardens have routinely dealt with persons involved with or sympathetic to various domestic terrorist organizations. These include ALF (Animal Liberation Front), ELF (Earth Liberation Front) and various "constitutionalist" and "militia" groups. The law enforcement officers may also be required to perform non-law enforcement duties at the discretion of the director.<sup>36</sup>

DFG has 119 supervisor and 262 field law enforcement positions proposed to be funded in FY 2004–2005, all of whom ultimately report to the Director of the department, who may or may not have law enforcement experience.<sup>37</sup>

**Department of Parks and Recreation peace officers and law enforcement functions**

The California Department of Parks and Recreation (DPR) has about 700 rangers who are peace officers whose primary duty is ensuring public safety.<sup>38</sup> State park rangers are responsible for protecting the state park system and the state vehicular recreation area and trail system from damage and to preserve the peace therein.<sup>39</sup> The rangers currently have dual missions involving both law enforcement and non-law enforcement functions. The non-law enforcement functions include interpretive duties and general administrative duties.

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The mission of DPR as a whole is, “To provide for the health, inspiration and education of the people of California by helping to preserve the state’s extraordinary biological diversity, protecting its most valued natural and cultural resources, and creating opportunities for high-quality outdoor recreation.”<sup>40</sup>

The department’s mission statement does not reference law enforcement as it relates to public safety. Park rangers function like any other police force and respond to calls for service and public safety protection. On an annual basis, DPR experiences a wide variety of criminal activity, including homicide, sexual assault, robbery, burglary, theft and various public nuisance crimes including alcohol-related arrests.

DPR manages more than 270 park units. These holdings are the largest and most diverse natural and cultural heritage holdings of any state agency in the nation. Responsible for patrolling almost one-third of California’s scenic coastline, DPR manages the state’s coastal wetlands, estuaries, beaches, and dune systems. The system consists of nearly 1.3 million acres, with over 280 miles of coastline; 625 miles of lake and river frontage; nearly 18,000 campsites; and 3,000 miles of hiking, biking, and equestrian trails.<sup>41</sup>

State parks range from a fraction of an acre in an urban setting to areas covering thousands of acres in rural settings. Some parks share a border with Mexico, others include several of the state’s large state reservoirs, for which DPR is the first responding public safety agency in an emergency. Over 70 million people visit California state parks annually, with most visits occurring between mid-May and mid-September. This seasonal increase strains the law enforcement staff charged with protecting the public as well as the state’s natural and cultural resources.<sup>42</sup>

Due to budget constraints and homeland security needs, state park rangers have been working with other state, federal and local agencies on public safety issues affecting state parks and the communities surrounding them. Since the events of September 11, 2001, the vulnerability of the state’s infrastructure has been highlighted, including nuclear power plants, gas lines and reservoirs that cross through and surround state park lands.<sup>43</sup>

Prior to September 11, 2001, state park peace officers assisted other agencies on an as-needed basis. Since then, the department has increased its participation with other law enforcement entities to better protect the public and state parks from terrorist threats. Due to the remote location of some state parks, rangers also have contact with groups known for their environmental terrorist activities, such as the Earth Liberation Front and Earth First. The Federal Bureau of Reclamation contracts with DPR to protect areas under the bureau’s jurisdiction, such as Folsom Dam, during periods of high alert.

State park peace officers also exchange information on a regular basis with officers who have responsibility for protecting neighboring facilities. For example, they meet regularly with staff



at the San Onofre Nuclear Generating Power Plant, Diablo Canyon Nuclear Power Plant and work with the State Strategic Committee on Terrorism. Key personnel also work with and relay information to the local CATIC (California Terrorist Information Center) and anti-terrorist working groups and are members of the CATIC Allied Agencies Groups.

The department also has three communications centers, which have statewide dispatch capabilities and dispatch for both DPR and DFG personnel. DPR also has limited firefighting capabilities and employs approximately 13 full-time Security/Firefighters at Hearst Castle.

The department's law enforcement personnel operate the following equipment and programs: one aircraft, K-9 enforcement, the off-highway vehicle program, patrol boats (both marine and inland waterways), state dive team and lifeguards/rescue program. They also operate their own police academy.

DPR law enforcement personnel had 1,155 arrests, issued over 14,000 citations and generated over 8,000 crime reports in 2003.

#### ***Department of Toxic Substances Control peace officers and enforcement functions***

The Department of Toxic Substances Control (DTSC), Criminal Investigations Branch, has 13 peace officers with the powers of arrest, search and seizure. The branch is charged primarily with investigating alleged criminal violations of the Hazardous Waste Control Law and routinely pursues a wide range of both felony and misdemeanor cases. The most serious of these cases involve midnight dumping or other unlawful disposal of hazardous waste, transportation of hazardous waste to unpermitted facilities, and the storage or treatment of hazardous wastes that creates a danger to the public and the environment from release, fire or explosion.

The branch also investigates notifications of missing "hazardous waste of concern," that could be used in a terrorist or other criminal act. Branch investigators work with other state, federal and local law enforcement agencies, including the California Highway Patrol, Department of Fish and Game, Federal Bureau of Investigations and the U.S. Environmental Protection Agency's Office of Criminal Investigations.

The branch opened 118 cases, referred 11 cases for criminal prosecution, executed nine search warrants and made one arrest in FY 2002–2003.

#### ***Department of Consumer Affairs enforcement and investigative functions of its boards and bureaus***

The Department of Consumer Affairs (DCA) comprises 40 regulatory entities responsible for regulating businesses and individuals who practice certain professions that affect the health, safety and welfare of California consumers. DCA has three boards and one division that

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employ peace officers: the Contractors State License Board, the California Medical Board, the Dental Board of California and the Division of Investigation.<sup>44</sup>

***Department of Consumer Affairs, Contractors State License Board***

The Contractors State License Board licenses and regulates contractors in 42 license classifications. It investigates complaints against contractors, and through the StateWide Investigative Fraud Team (SWIFT), works to eliminate the number of unlicensed contractors in California.

The board's peace officers are used primarily for serious complaints such as those involving fraud. They also handle more complicated cases such as those involving inspections of construction sites, undercover operations and warrant service. They do not perform the full range of peace officer duties and responsibilities in accomplishing their assignments and cannot carry a firearm.

In 2000, the Bureau of State Audits issued a report entitled, *"Department of Consumer Affairs: Lengthy Delays and Poor Monitoring Weaken Consumer Protection,"* which found numerous weaknesses in the investigative functions of the board. The report found that it takes an average of 324 days for the board to process its legal cases. The report also disclosed 50,000 cases were opened in FYs 2001–2002 and 2002–2003, none resulting in arrests.<sup>45</sup>

A 2003 legislatively mandated report recommended the state increase the number of board peace officers. Prosecutors throughout the state agreed a significant increase in this staffing capability is essential for the board to effectively handle complex and major fraud-type cases.<sup>46</sup> The board has not increased its number of peace officers.<sup>47</sup>

***Department of Consumer Affairs, the California Medical Board***

The California Medical Board's mission is to protect healthcare consumers through the proper licensing and regulation of physicians and surgeons and certain allied healthcare professions through vigorous, objective enforcement of the Medical Practice Act.<sup>48</sup> The California Medical Board had 91 sworn peace officer positions in FY 2003–2004. The officers perform a full range of peace officer duties and carry firearms.<sup>49</sup>

The California Medical Board received more than 11,000 complaints in FY 2002–2003, opened 2,138 cases resulting in 53 criminal cases, issued 532 citations and made 21 arrests.<sup>50</sup> The average time to investigate a complaint was 208 days. In 2003 the Legislature called for a review of the Medical Board's enforcement operations.<sup>51</sup> Specifically, the Legislature enacted an Enforcement Program Monitor to monitor, among other things, whether or not the Medical Board accurately and consistently implements the laws and rules affecting its discipline and whether it appropriately prioritizes its investigations and prosecutions.<sup>52</sup>

***Department of Consumer Affairs, the Dental Board of California***

The Dental Board of California regulates the practice of 30,000 dentists as well as other dental health professionals, such as dental hygienists and dental assistants.<sup>53</sup> Its mission is to protect the California consumer by licensing only those dental health care professionals who demonstrate competency and to take appropriate action whenever licensees fail to maintain the standard of practice.<sup>54</sup> The Dental Board's Enforcement Division has 10 sworn peace officers and several investigators.<sup>55</sup> In FY 2002–2003, it took the board an average of 400 days to process its legal cases.<sup>56</sup>

The Legislature created an Enforcement Program Monitor for the Dental Board. The monitor was established to “monitor and evaluate the dental disciplinary system and procedures, with specific concentration on improving the overall efficiency of the enforcement program.”<sup>57</sup>

Overall, results of the monitor's initial assessment showed, among other things, there were numerous significant inconsistencies in the way that board was processing and investigating complaints, and that it was taking too long to resolve and investigate complaints.

The board has since rectified some of the issues, although the monitor's final report, issued in February 2004, makes further recommendations for improvement.<sup>58</sup> They found that staff effectiveness and efficiency and program service levels could be improved by converting some (or all) of the board's non-sworn inspectors to sworn investigators, and then reallocating available staffing resource capabilities so that they are better aligned with ongoing investigative workload demands.

The board received 2,974 complaints in FY 2002–2003, opened 469 cases, issued 532 citations and generated 32 criminal filings.

***Department of Consumer Affairs, Division of Investigation***

The Division of Investigation (DOI) was established within the DCA in 1961 to provide centralized investigative services for the various boards, bureaus and commissions within DCA.<sup>59</sup> Its mission is to protect public health, safety and welfare by providing timely, objective, courteous and cost-effective investigations of allegations concerning misconduct by license-holders and to develop information for filing criminal, administrative and civil actions.<sup>60</sup>

DCA licenses about 2.3 million businesses and professionals in the state. DOI is the only law enforcement branch of DCA vested with the statutory authority to investigate all of the laws administered by the various DCA boards, bureaus and commissions.<sup>61</sup> Sworn personnel are supervised through a law enforcement command structure and perform all investigation and enforcement tasks using seven field office locations throughout the state.<sup>62</sup>

DOI handles a variety of cases. Cases involving health care professionals include theft of narcotics from health care facilities, sexual assault and battery of patients, gross negligence and

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incompetence resulting in patient abuse or death, fraud and other felony crimes. Cases involving private security guards/patrol operator misconduct include weapons violations, identity fraud, counterfeiting of registration/licenses and identification of potential terrorist members. The division, using department-licensing databases, serves as the single point of contact for local, state, and federal agencies in investigating licensees potentially involved in terrorist activities.<sup>63</sup>

The division had 57 sworn peace officer positions in FY 2003–2004.<sup>64</sup> In FY 2002–2003, the division opened 1,472 cases, issued 8 citations, generated 125 criminal filings, and made 21 arrests.<sup>65</sup>

### ***Department of Developmental Services peace officers and enforcement functions***

The mission of the Department of Developmental Services, Office of Protective Services, is to provide fire protection and law enforcement services to clients, employees and visitors at developmental centers and community facilities to ensure a safe, crime-free environment.<sup>66</sup> Office of Protective Services peace officers, both uniformed and non-uniformed, are assigned to seven developmental centers located throughout the state.<sup>67</sup>

The office has a total of 115 sworn peace officers and investigators. Peace officers assigned to the developmental centers provide unarmed internal and external security at state developmental centers, community facilities and custody services involving patients and inmate transportation services.<sup>68</sup> Investigators at the centers and facilities conduct criminal investigations of misconduct, including allegations of patient abuse, patient deaths and employee misconduct.<sup>69</sup> In FY 2002–2003, the office handled 2,735 cases, generated 183 criminal filings, issued 401 citations and made 14 arrests.<sup>70</sup>

The Department of Developmental Services, Office of Protective Services is currently part of an administrative reorganization prompted, in part, by a report issued in March of 2002 entitled, *"Policing in the Department of Developmental Services."* The report made several findings, including that the duties and responsibilities of uniformed peace officers vary from one center to another, causing vague and inconsistent performance objectives. The report also identified the department as having an excessive turnover rate for investigators, a lack of a unified central command structure, ineffective peace officer supervision (non-peace officers supervising peace officers), and inconsistent law enforcement resources and training from one center to another.<sup>71</sup>

Many of these findings have since been rectified; however, they exemplify the many challenges faced by law enforcement personnel when they are employed by a small unit or division within a large, non-public safety-oriented agency.





### **California State Fair Police Department**

The mission of the California State Fair Police Department (CSFPD) is to work in partnership with the community, to protect life and property, provide a safe environment, and enhance the experience for all who visit and work at the California Exposition and State Fair Facility (Cal Expo) in Sacramento, California. The department is directed to keep order and preserve peace at Cal Expo year round. The department's sworn officers have statewide peace officer powers.<sup>72</sup>

There are a total of 248 sworn officers working for CSFPD. Most of the officers work part-time for the CSFPD and are either retired state peace officers or have an affiliation with some other law enforcement agency. A large number of CSFPD officers work full-time for other law enforcement agencies in the Sacramento area and are employed by the CSFPD for only a few days per month. The officers serve with the approval of their respective agencies, but work in the uniform and under the orders and policies of the CSFPD.<sup>73</sup>

The need for CSFPD was first recognized after riots occurred during the California State Fair in the early 1970's. The Cal Expo grounds cover several hundred acres and the number of people on the grounds varies by the day and type of event being held on the premises. The number of people can vary from several hundred to almost 100,000. The CSFPD officers are expected to respond to, investigate, and document all law enforcement-related requests for service, which can include assaults, domestic violence, property loss, injury, missing children, and vehicle violations. The duties and responsibilities of the CSFPD are similar to those of the CHP in that they protect life and property and provide a safe environment at state facilities.<sup>74</sup>

### **Recommendations**

**A. The Governor should consolidate state law enforcement by establishing a Division of the California Highway Patrol.**

With its more than 7,000 peace officers, CHP would provide economies of scale for purchasing law enforcement equipment. It also would provide the infrastructure for consistent peace officer training, improve service and streamline cross-cutting law enforcement operations.

**B. The Governor should further consolidate state law enforcement functions by establishing a Division of Law Enforcement. The following departments and law enforcement functions should be transferred to a Division of Law Enforcement:**

- Department of Motor Vehicles peace officers and enforcement/investigation functions;
- Alcoholic Beverage Control;
- Department of Fish and Game peace officers and law enforcement functions;

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- Department of Parks and Recreation peace officers and law enforcement functions;
  - Department of Toxic Substances Control peace officers and enforcement functions;
  - Department of Consumer Affairs, enforcement and investigative functions of its boards and bureaus;
  - Department of Developmental Services peace officers and enforcement functions; and
  - California State Fair Police Department.

Consolidating these peace officers and their functions into a new public safety agency would enhance the state's ability to serve and protect the public. It would reduce operational inefficiencies and increase effectiveness under a single, uniform command structure, making state government more accountable to the public.

Reorganizing and consolidating California state law enforcement also would improve communication between entities and allow increased information sharing within state government as well as between the state, local and federal agencies and the people of California.

- C. Once recommendations A and B have been implemented, the Governor should consider consolidating state law enforcement further by identifying additional state law enforcement entities that should ultimately be consolidated.**

### ***Fiscal Impact***

As a result of this proposal, a number of state departments in their entirety and the law enforcement functions of specified departments would be consolidated in two divisions under DPS&HS. These departments and functions will come intact with their respective personnel and appropriate budget share. Additional positions will not be needed for these new divisions; therefore, an increase in General Fund monies will not be necessary. It is also anticipated that additional funds will not be needed for any personal staff relocation costs, nor will funding initially be required for the relocation of office operations.

It is anticipated that savings will eventually be realized through the following means:

- ***Personnel Reductions:*** Consolidating these functions and positions into a single department will eliminate the need for various management and administrative positions. Once these positions are vacated through attrition and subsequently eliminated, annual savings could be realized.
- ***Training:*** Training would be consolidated at one lead agency, such as CHP. This would ensure consistency in the development and delivery of training curriculum, and potentially reduce expenses in those areas as well as a possible reduction in training costs for staff housing, equipment and facilities.



- **Vehicle/Equipment Purchase and Acquisition:** Equipment acquisition for department personnel would be handled through a consolidated purchasing/contracting process, such as the procurement process now in use by CHP. In addition, it is likely that volume contracting and purchasing would lead to volume pricing benefits.

Although savings are anticipated as a result of efficiencies related to the consolidation of functions and the elimination of overlapping operations in the delivery of law enforcement services, they are, as yet, undetermined. Therefore, the net fiscal impact of this proposal is unknown.

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## Endnotes

- <sup>1</sup> California Pen. C. Section 830 et seq.
  - <sup>2</sup> Interview with Edward R. Fincel, assistant chief, California Highway Patrol, Sacramento, California (June 22, 2004).
  - <sup>3</sup> California Pen. C. Section 13510 et seq.
  - <sup>4</sup> Interview with Manny Padilla, deputy commissioner, California Highway Patrol, Sacramento, California (June 22, 2004).
  - <sup>5</sup> Interview with Manny Padilla.
  - <sup>6</sup> Interview with Edward R. Fincel.
  - <sup>7</sup> Interview with Manny Padilla.
  - <sup>8</sup> Interview with Edward R. Fincel.
  - <sup>9</sup> Interview with Manny Padilla.
  - <sup>10</sup> California Highway Patrol, "CHP General Order 0.1," Sacramento, California, revised January 2003.
  - <sup>11</sup> California Highway Patrol, "History of the CHP," <http://www.chp.ca.gov/html/history.html> (last visited June 22, 2004).
  - <sup>12</sup> Interview with Manny Padilla.
  - <sup>13</sup> California Highway Patrol, "Departmental Overview for the Assembly Transportation Committee" (Sacramento, California, March 1, 2004), p. 33.
  - <sup>14</sup> California Highway Patrol, "Statewide Integrated Traffic Records System, 2003" (Sacramento, California, March 1, 2004), p. 34.
  - <sup>15</sup> Interview with Manny Padilla.
  - <sup>16</sup> Interview with Manny Padilla.
  - <sup>17</sup> Interview with Edward R. Fincel.
  - <sup>18</sup> Interview with Manny Padilla.
  - <sup>19</sup> Interview with Manny Padilla.
  - <sup>20</sup> California Highway Patrol, "Departmental Overview for the Assembly Transportation Committee."
  - <sup>21</sup> Department of Motor Vehicles Investigations Division, "Mission Statement" (Sacramento, California, February 2003).
  - <sup>22</sup> Department of Finance, "2004–2005 Salaries and Wages Supplement;" and California Pen. C. Section 830.3(c).
  - <sup>23</sup> Department of Motor Vehicles, Kathy Keating, chief of staff, response to "California Performance Review Public Safety Team Questionnaire" (Sacramento, California, March 9, 2004), p. 2.
  - <sup>24</sup> Department of Motor Vehicles, Kathy Keating, response to "California Performance Review Public Safety Team Questionnaire."
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- <sup>25</sup> Department of Alcoholic Beverage Control, "Mission Statement," <http://www.abc.ca.gov/mission.html> (last visited June 23, 2004).
- <sup>26</sup> California Pen. C. Section 830.2.
- <sup>27</sup> California Bus. & P. C. Section 25755; and California Pen. C. Section 830.2.
- <sup>28</sup> Alcoholic Beverage Control, Jerry Jolly, director, response to "California Performance Review Public Safety Team Questionnaire," March 2004.
- <sup>29</sup> California Bus. & P. C. Section 25619.
- <sup>30</sup> California Bus. & P. C. Section 25755.
- <sup>31</sup> Alcoholic Beverage Control, Jerry Jolly, response to "California Performance Review Public Safety Team Questionnaire;" and interview with Jerry Jolly, Sacramento, California, June 18, 2004.
- <sup>32</sup> California Pen. C. Section 830.2; California Fish & G. C. Section 856.
- <sup>33</sup> State Personnel Board, "Proposed changes to California State Personnel Board job specifications for the title 'Fish and Game Warden'" (Sacramento, California, June 22, 2004), p. 1.
- <sup>34</sup> Little Hoover Commission, "Be Prepared: Getting Ready for New and Uncertain Dangers" (Sacramento, California, January 2002), p. 6.
- <sup>35</sup> Department of Fish and Game, "DFG Nationally Recognized for Homeland Security Port Efforts," Sacramento, California, September 13, 2002 (Press release).
- <sup>36</sup> Interview with Joe Mello, president, California Fish and Game Warden's Association, Sacramento, California (June 21, 2004).
- <sup>37</sup> Department of Fish and Game, Tom Pedersen, chief of Enforcement Branch, response to "California Performance Review Public Safety Team Questionnaire," April 2004.
- <sup>38</sup> California Pen. C. Section 830.2(f); and California Pub. Res. C. Section 5008.
- <sup>39</sup> California Pub. Res. C. Section 5008(a).
- <sup>40</sup> Department of Parks and Recreation, "About Us," [http://www.parks.ca.gov/?page\\_id=91](http://www.parks.ca.gov/?page_id=91) (last visited June 23, 2004).
- <sup>41</sup> Department of Parks and Recreation, Lynn Rhodes, chief of Field Services, response to "California Performance Review Public Safety Team Questionnaire," April 2004.
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- <sup>46</sup> California Bus. & Pro. C. Section 7092; and Department of Consumer Affairs, "CSLB Enforcement Program Monitor Final Report" (Sacramento, California, April 1, 2003).
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- <sup>48</sup> Department of Consumer Affairs, California Medical Board, "About the Medical Board of California," <http://www.medbd.ca.gov/abouttheboard.htm> (last visited June 23, 2004).
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- <sup>53</sup> Department of Consumer Affairs, California Dental Board, "Enforcement Program Monitor Initial Report" (Sacramento, California, August 23, 2002), p. ES–1.
- <sup>54</sup> California Bus. & Pro. C. Section 1600–21.
- <sup>55</sup> Department of Consumer Affairs, Dental Board of California, "Organizational Chart," Sacramento, California, March 1, 2004.
- <sup>56</sup> California Bureau of State Audits, "Department of Consumer Affairs: Lengthy Delays and Poor Monitoring Weaken Consumer Protection," p. 39.
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- <sup>66</sup> Department of Developmental Services, "Vision and Mission Statements," [http://www.dds.ca.gov/STPlan/vision\\_mission.cfm](http://www.dds.ca.gov/STPlan/vision_mission.cfm) (last visited June 21, 2004).
- <sup>67</sup> Department of Developmental Services, "Developmental Centers Home Page," <http://www.dds.ca.gov/devctrs/InfoAboutDC.cfm> (last visited June 21, 2004).
- <sup>68</sup> Department of Personnel Administration, "Peace Officer, Developmental Center," <http://www.dpa.ca.gov/textdocs/specs/s1/s1954.txt> (last visited June 21, 2004).
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- <sup>71</sup> Office of the Attorney General, Policing in the Department of Developmental Services (Sacramento, California, March 2002), Section 1, pp. 5–7.
- <sup>72</sup> California Penal Code Section 830.2h.
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- <sup>74</sup> Interview with Manny Padilla.

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# Create a Division of Fire Protection and Emergency Management

## **Summary**

Roles, functions, and responsibilities for California state fire protection and emergency management are divided among a number of different agencies. To eliminate confusion and improve command and control during emergencies and disasters, these functions should be consolidated into a new California Division of Fire Protection and Emergency Management. Merging similar functions and disciplines required for efficient emergency management will provide California a greater level of protection and service.

## **Background**

Since 1950, state proclaimed and federally declared disasters have taken 860 lives, caused 4,822 injuries, and accounted for more than \$64 billion in damage in California.<sup>1</sup> The Northridge earthquake in 1994 caused 61 deaths, 1,500 injuries and more than \$40 billion in losses.<sup>2</sup> The California firestorm of 2003 cost the lives of 24 people and destroyed 3,631 homes.<sup>3</sup> All of California's 58 counties were damaged in the 1990s by severe flooding, resulting in the loss of 79 lives and \$5 billion in economic losses.<sup>4</sup> The impact of these disasters on California's citizens, communities, businesses and economy go far beyond the statistics.

The field of emergency management is divided into four phases: response, preparedness, recovery and hazard mitigation.<sup>5</sup> During disasters the public views emergency response activities mainly through the press and television. Often, the public assumes the activities viewed are the sole function of emergency management. In reality, however, emergency management is a 24-hour, seven days a week, year-round endeavor, of which emergency response represents only one phase.

The next phase of emergency management is preparedness, which supports and enhances the response to emergencies. Another phase is recovery. Disasters deplete financial reserves, stop or slow economic activity and generally upset everyday activity. Recovery restores normalcy as rapidly as possible, reviving necessary local and state economies.

Hazard mitigation is the cornerstone of emergency management.<sup>6</sup> Hazard mitigation is defined as any action which seeks to reduce or eliminate the long-term risk to people and property. Hazard mitigation is of such importance that the federal government created and passed the Disaster Mitigation Act of 2000. The act requires all state and local governments to have Federal Emergency Management Administration (FEMA)-approved Hazard Mitigation Plans, by November 1, 2004.<sup>7</sup> Without a FEMA-approved plan, California will not be eligible for

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certain disaster recovery funding from FEMA, which has exceeded \$9 billion since the Northridge earthquake.<sup>8</sup>

The California Performance Review conducted a thorough review of more than 30 departments and units having a role in the state's emergency plan to identify duplicated activities and inefficiencies. The review also was intended to seek opportunities for improving the quality of activities and eliminating repetitive emergency management activities. The review process included in-depth research, questionnaires and interviews with a variety of executives. Several critical issues were identified:

- There is confusion regarding the roles of the Governor's Office of Emergency Services and the Office of Homeland Security;
- Local governments and state agencies overwhelmingly identified either funding or grants administration as a primary concern as well as training;
- FEMA identified a need for emergency management training of state agencies;
- California Department of Forestry cited the need for funding to train fire apparatus engineers and Incident Command Teams; and
- There is a need for emergency responders from different organizations to be able to better communicate with one another, also referred to as better "communications interoperability."<sup>9</sup>

California has a Statewide Emergency Management System model which establishes protocol for responding to emergencies. The model, however, does not establish a unified command structure. Entities are autonomous and cooperative relationships do not come without approval from each supervising entity. The following illustrates similar emergency management functions and interrelated services performed within state government:

### ***Governor's Office of Emergency Services***

The Governor's Office of Emergency Services (OES) is responsible for coordinating all four phases of the state's emergency management system. OES administers the state's mutual aid system, which coordinates movement of the state's emergency resources from one location to another when needed to supplement local emergency management resources. OES also administers federal grant funds dedicated to emergency management. OES has a "multi-hazard approach" to emergency management in that it is involved in coordinating the state's response to a variety of disasters and emergencies. Finally, OES administers the state's Standardized Emergency Management System (SEMS) and Response Information Management System, both of which provide critical infrastructure and protocol for the state's overall emergency management system.<sup>10</sup>

### ***California Department of Forestry and Fire Protection***

The California Department of Forestry and Fire Protection (CDF) is the state's primary wildland firefighting agency. The CDF writes the State Fire Plan, which is the fire portion of California's Hazard Mitigation Plan required by FEMA. CDF has a large professional



firefighting force, incident command system management teams and the capability of responding to a variety of disasters and emergencies. In addition, CDF has a comprehensive professional training program and employee performance review process, and uses a “total force concept” in which their employees are cross-trained to perform varying duties central to CDF’s mission.<sup>11</sup>

### ***Office of Homeland Security***

The Office of Homeland Security (OHS) was created by Executive Order D-67-03 in response to the September 11, 2001, terrorist attacks and the creation of the federal Department of Homeland Security. Two Legislative Analyst reports identified potential overlapping responsibilities between OHS and OES as a result of this executive order.<sup>12</sup>

### ***Emergency Medical Services Authority***

The Emergency Medical Services Authority (EMSA) is charged with coordinating and integrating the state’s emergency medical care. It also is responsible for coordinating medical disaster response for California. A major challenge for EMSA is that it is not seen as a public safety agency, and yet it is expected to provide vital emergency medical services when disasters and emergencies occur.<sup>13</sup> EMSA has also been overlooked at the state and local level for funding and emergency management planning.<sup>14</sup>

### ***California Department of Social Services, Disaster Section***

The Disaster Section of the California Department of Social Services is responsible for coordinating state resources during disasters and emergencies for mass care and sheltering, and for administering the state’s Supplemental Grant Program. Both of these areas of responsibility are critical to the state’s emergency management responsibilities and the section’s location in state government is a significant issue to its staff.<sup>15</sup> It is imperative the disaster section be aligned organizationally with other emergency management functions because of the types of services it provides and the need to coordinate those services during disasters and emergencies.

### ***Department of Water Resources, Division of Flood Management and the Division of Safety of Dams***

The Department of Water Resources (DWR) is a large state department primarily responsible for delivering suitable water. The DWR’s Flood Management Division and the Safety of Dams Division, however, are a major part of the state’s emergency management efforts relating to floods and dam failure. The Governor’s Flood Emergency Action Team, created in response to the 1997 floods, recommended enhancing DWR’s Geographical Information Systems (GIS) capability to improve the department’s ability to manage the state’s dams and waterways. Due to budget cuts, however, GIS capability is less than it was prior to 1997. Like EMSA staff, the staff of DWR are challenged because they are often not seen as public safety personnel, although the damage caused by floods is significant and will continue to increase as California’s population grows.<sup>16</sup>

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During an emergency, a rapid response is critical. If the service of more than one responding agency is needed, coordination of personnel, equipment and other resources is vital to minimize the loss of life and property. Unfortunately, that is not how public safety is organized in California state government.

### ***Recommendation***

**The Governor should consolidate the state's eight emergency management functions. Consolidating the state's emergency management functions, services, and disciplines will benefit California by improving its coordination of emergency management services.**

Consolidating California's emergency management functions would result in a variety of benefits, including the following:

- Allowing OES to better coordinate emergency functions performed by departments currently scattered across state government.<sup>17</sup> This would increase effectiveness in all emergency management phases, especially emergency response to disasters;
- Coordinating local planning technical assistance. This would eliminate duplication and the need to coordinate various requirements;
- Combining the efforts of these departments to enhance hazard mitigation, resulting in saved lives, reduced injuries and less property damage;
- Allowing emergency management funding to be used for enhancing DWR's Geographical Information Systems, a critical component of effective emergency management;
- Standardizing and enhancing emergency management training programs, including outreach efforts, allowing them to be provided at a lower cost; and
- Providing a stronger, cohesive foundation for public-private partnerships to reduce losses and assist communities to better recover economically following hazardous events.

### ***Fiscal Impact***

As a result of this proposal, the state's eight emergency management functions within existing departments will be consolidated. The offices to be consolidated under DPS&HS and within the newly created Division of Fire Protection and Emergency Management will come intact with their respective personnel and appropriate budget funding. Additional positions will not be needed for this new division; therefore, an increase in General Fund monies will not be necessary. It is also anticipated that additional funds will not be needed for any personal staff relocation costs; nor will funding initially be required for the relocation of office operations.

Although savings are anticipated as a result of efficiencies related to the consolidation of functions and the elimination of overlapping operations in the delivery of fire protections and emergency management services, they are, as yet, undetermined. Therefore, the net fiscal impact of this proposal is unknown.



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## Endnotes

- <sup>1</sup> Office of Emergency Services, "California Disasters Since 1950, Draft State of California Multi-Hazard Mitigation Plan" (Sacramento, California, 2004).
- <sup>2</sup> California Geological Survey, "Northridge Earthquake 10 Year Anniversary," [http://www.consrv.ca.gov/cgs/geologic\\_hazards/earthquakes/northridge.htm](http://www.consrv.ca.gov/cgs/geologic_hazards/earthquakes/northridge.htm) (last visited June 21, 2004).
- <sup>3</sup> The Governor's Blue Ribbon Fire Commission, "Report to the Governor" (Sacramento, California, April 2004).
- <sup>4</sup> Office of Emergency Services, "State of California Multi-Hazard Mitigation Plan" (Sacramento, California, 2004), Table 6.1A.
- <sup>5</sup> Office of Emergency Services, "State of California Multi-Hazard Mitigation Plan."
- <sup>6</sup> Federal Emergency Management Administration (FEMA), "Mitigation Division," [www.fema.gov/fema/](http://www.fema.gov/fema/) (last visited June 21, 2004).
- <sup>7</sup> Code of Federal Regulations, 44 CFR 201.4.
- <sup>8</sup> Office of Emergency Services, "Funds provided by FEMA for the Public Assistance Program and the Hazard Mitigation Grant Program, Automated Ledger System," Sacramento, California, April 2004 (computer printout).
- <sup>9</sup> California State Auditor, "Terrorism Readiness: The Office of Homeland Security, Governor's Office of Emergency Services, and California National Guard Need to Improve Their Readiness to Address Terrorism," Report No. 2002-117 (Sacramento, California, July 2003), p. 2; California Performance Review, Emergency Management Questionnaire 2004; California Performance Review, Emergency Management Questionnaire 2004, the California Department of Forestry and Fire Protection response.
- <sup>10</sup> California Performance Review, "Local Government Emergency Management Survey," Sacramento, California, 2004.
- <sup>11</sup> Department of Forestry and Fire Protection, "Response to California Performance Review Emergency Management Questionnaire," Sacramento, California, 2004.
- <sup>12</sup> California State Auditor, "Governor's Office of Emergency Services: Its Oversight of the State's Emergency Plans and Procedures Needs Improvement While Its Future Ability to Respond to Emergencies May Be Hampered by Aging Equipment and Funding Concerns," p. 2; and California State Auditor, Terrorism Readiness: The Office of Homeland Security, Governor's Office of Emergency Services, and California National Guard Need to Improve Their Readiness to Address Terrorism, p. 2.
- <sup>13</sup> Emergency Medical Services Authority, "Response to California Performance Review, Emergency Management Questionnaire," Sacramento, California, 2004.
- <sup>14</sup> Interview with Emergency Medical Services Authority staff, Sacramento, California (March 30, 2004).
- <sup>15</sup> California Seismic Safety Commission, "Response to California Performance Review Emergency Management Questionnaire," Sacramento, California, 2004.
- <sup>16</sup> Department of Water Resources, "Response to California Performance Review Emergency Management Questionnaire," Sacramento, California, 2004.
- <sup>17</sup> California State Auditor, Governor's Office of Emergency Services: Its Oversight of the State's Emergency Plans and Procedures Needs Improvement While Its Future Ability to Respond to Emergencies May Be Hampered by Aging Equipment and Funding Concerns, Report No. 2002-113 (Sacramento, California, July 2003), p. 2; and California State Auditor, Terrorism Readiness: The Office of Homeland Security, Governor's Office of Emergency Services, and California National Guard Need to Improve Their Readiness to Address Terrorism, p. 2.

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# Consolidate Victim Services

## Summary

Funding for victim service providers and compensation to victims of violent crime is currently spread across a number of different state offices, boards and departments. This fragmented structure creates an unnecessary burden, especially on victim service providers at the local level, as they must complete multiple state grant applications and progress reports that oftentimes cover different time periods and services. To coordinate policies, streamline grants management, encourage provider input, and provide clear leadership, victim services should be consolidated.

## Background

In November 2003, a report was prepared by the California State and Consumer Services Agency entitled, "Strengthening Victim Services in California: A Proposal for Consolidation, Coordination, and Victim-Centered Leadership."<sup>1</sup> This comprehensive report contained an overview of victim services in California. The study includes extensive input from victim service providers and cites a number of recent audits. The report documents serious weaknesses in the current structure, including:

- Lack of coordination among government agencies resulting in conflicting and duplicative policies;
- Inadequate planning for victim services causing uncertainty in funding from year-to-year and changing program requirements;
- Poor communication among state advisory committees that serve as informal policy-making bodies;
- Failure to consult victims and service providers on significant policy issues;
- A top-heavy administrative structure in the departments that deal with these issues, which produces excessive overhead costs that reduce the dollars available to victims; and
- Poor grant management, including inadequate technical assistance to grantees and a failure to conduct thorough program evaluations.<sup>2</sup>

For example, there are about 90 domestic violence programs that receive grants from both the Office of Emergency Services (OES) and the Department of Health Services (DHS). Both state entities are required to provide technical assistance and conduct site visits, as well as review progress reports from these domestic violence programs. Additionally, 22 victim-witness assistance centers receive funding from both the Victim Compensation and Government Claims Board (VCGCB) and OES.<sup>3</sup>

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Other recent reports released by the Little Hoover Commission (July 2003), the Legislative Analyst's Office (analysis of the Fiscal Year 2003–2004 budget), the Bureau of State Audits (October 2002), and the Urban Institute (March 2003) have drawn similar conclusions as those mentioned above.<sup>4</sup> Additionally, a number of community-based organizations, such as the California Alliance Against Domestic Violence, California Coalition Against Sexual Assault, and the Statewide California Coalition for Battered Women have all proposed some form of a consolidated victim services agency at the state level.<sup>5</sup>

### ***Existing organization***

There are three primary and 10 secondary state departments providing victim services in California.<sup>6</sup>

The three primary state departments that provide the major sources of funding and support for crime victim services are:

- The Victim Compensation and Government Claims Board (VCGCB), which reports to the Governor's Office through the State and Consumer Services Agency (SCSA). In FY 2002–2003, the Victim Compensation Program (VCP) of the VCGCB paid out \$117 million to compensate 56,661 victims for medical, mental health, funeral, income loss and other costs.<sup>7</sup> VCP has a personnel budget of \$15.7 million and a staff of 297 (as of April 15, 2004).<sup>8</sup>
- The Department of Health Services (DHS), within the Health and Human Services Agency (HHS), provided \$23 million in FY 2002–2003 to nearly 100 domestic violence shelters for training, prevention, and education programs through the Battered Women's Shelter Program (BWSP).<sup>9</sup> As of March 31, 2004, BWSP had a staff of six.<sup>10</sup>
- The Office of Criminal Justice Planning (OCJP), which reported directly to the Governor's Office, distributed \$102 million in FY 2002–2003 to hundreds of local victim service programs such as battered women's shelters and rape crisis centers.<sup>11</sup> OCJP was eliminated effective January 1, 2004, and was divided and relocated by branch. The Victim Services Branch (VSB) and Public Safety Branch (PSB) were placed temporarily under the Office of Emergency Services (OES) and the Juvenile Justice Branch (JJB) was relocated to the Board of Corrections. As of March 15, 2004, VSB had a staff of 36.<sup>12</sup>

### ***Other states***

Other states, including Arizona, Colorado, Florida, New York, Oregon, Pennsylvania, and Texas co-locate victim support and victim compensation functions within a single government organization.<sup>13</sup> California could also consolidate its victim services, which could result in a variety of improvements, including the following:

- Provide the state with a single lead agency on crime victims' issues and improve coordination at the state level;
- Provide clear leadership and a unified vision on victim's issues;
- Increase avenues for collaboration among public and private victim service providers;



- Improve communication among advisory bodies and provide a conduit for victim and service provider input on statewide issues involving victims of crime;
- Maximize the collection of restitution and acquisition of state and federal funds; and
- Develop consistent criteria for awarding of grants and evaluating programs while coordinating the distribution of funds to the local level.

## **Recommendations**

### **A. The Governor should work with the Legislature to consolidate victim services.**

The following entities should be included in this consolidation:

- The Victim Compensation Program of the Victim Compensation and Government Claims Board;
- The Battered Women's Shelter Program from the Department of Health Services; and
- The Victim Services Branch of the Governor's Office of Emergency Services.

The consolidated program would distribute nearly \$245 million in state and federal funds directly to victim service providers and survivors of violent crimes, and have an overall budget of about \$280 million.<sup>14</sup> It would contain almost 340 staff in two main branches: the Grant Management Branch and the Victim Restitution and Compensation Branch. Grant administration would be done at the department level. It is anticipated that grant management staff would be cross-trained to support and administer emergency grants during and after man-made or natural disasters.<sup>15</sup>

### **B. The Governor should work with the Legislature to consolidate some of the ten secondary victim-related programs.<sup>16</sup>**

## **Fiscal Impact**

As a result of this proposal, the state's three primary entities involved with the provision of victim services within existing departments will be consolidated. The offices to be consolidated will come intact with their respective personnel and budget appropriations. Additional positions will not be needed; therefore an increase in General Fund monies will not be necessary for additional personnel costs. Additional funds will not be needed for any personal staff relocation costs. However, there will be costs associated with moving the office operations and co-locating approximately 42 staff.

Savings may be identified once all funding sources are combined. For example, technical assistance, audits, monitoring, evaluations and tracking of grant funds and grant programs currently done separately by DHS, OES, and VCGCB would be consolidated. Consolidation could also make this new division eligible for more federal funding since projects that incorporate collaboration and a team approach are sometimes funded at a higher level.

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Examples of this would be the discretionary portion of grant funds from the federal Office for Victims of Crime and/or the Victims of Crime Act of 1984.

Local victim services now receive state funding from multiple grants with multiple funding streams. Funding goes to a variety of entities, including community-based organizations, district attorneys, probation, police and sheriffs departments, and victim/witness assistance centers. A consolidation of these grants in each county could result in substantial state and local savings.

Restitution collection efforts could also be coordinated statewide, which may result in a substantial increase in funds for compensation to victims and to victim services.

Although savings are anticipated as a result of efficiencies related to the consolidation of functions and the elimination of overlapping operations in the delivery and management of victim services, they are undetermined.

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## Endnotes

- <sup>1</sup> AB 2435 (Chapter 89, Statutes of 2002). Report requiring the State and Consumer Services Agency to: (1) study victim service programs throughout the state; (2) compare California's services to other state programs; and (3) explore alternative funding methods to ensure seamless, integrated services.
- <sup>2</sup> California State and Consumer Services Agency, "Strengthening Victim Services in California: A Proposal for Consolidation, Coordination, and Victim-Centered Leadership" (Sacramento, California, November 2003), p. v.
- <sup>3</sup> State of California Victim Compensation and Government Claims Board, "Annual Report July 1, 2002–June 30, 2003" (Sacramento, California, 2003), p. 41.
- <sup>4</sup> Little Hoover Commission on California State Government Organization and Economy, "Improving Public Safety: Beyond the Office of Criminal Justice Planning" (July 2003), <http://www.lhc.ca.gov/lhcdir/171/Report171.pdf> (last visited May 26, 2004); Legislative Analyst's Office, "2003–2004 Budget Analysis, Judiciary and Criminal Justice" (Sacramento, California), pp. D-67 through D-71; Bureau of State Audits Study, "Office of Criminal Justice Planning: Experiences Problems in Program Administration, and Alternative Administrative Structures for the Domestic Violence Program Might Improve Program Delivery" (October 2002), <http://www.bsa.ca.gov/bsa/pdfs/2002-107.pdf> (last visited May 26, 2004); and Urban Institute, "The National Evaluation of State Victims of Crime Act Assistance and Compensation Programs: Trends and Strategies for the Future" (Washington, D.C., March 2003).
- <sup>5</sup> California State and Consumer Services Agency, "Strengthening Victim Services in California: A Proposal for Consolidation, Coordination, and Victim-Centered Leadership," pp. 64–77.
- <sup>6</sup> California State and Consumer Services Agency, "Strengthening Victim Services in California: A Proposal for Consolidation, Coordination, and Victim-Centered Leadership," pp. 64–77. Identified secondary programs as DHS Epidemiology and Prevention of Injury Control Program (EPIC); The Department of Housing and Community Development (HCD); California Department of Corrections, Office of Victim Services and Restitution; California Youth Authority (CYA); The Department of Justice (DOJ) Office of Victim Services; DOJ Crime and Violence Prevention



Center (CVPC); DOJ California Witness Protection Program; The Secretary of State's "Safe at Home" Program; The Department of Mental Health; and The Department of Social Services, Office of Child Abuse Prevention (OCAP).

- <sup>7</sup> State of California Victim Compensation and Government Claims Board, "Annual Report July 1, 2002–June 30, 2003" (Sacramento, California, Fall of 2003), p. 9.
- <sup>8</sup> State of California Victim Compensation and Government Claims Board, "Report of Non-Represented and Represented Employees," Sacramento, California, April 19, 2004.
- <sup>9</sup> California State and Consumer Services Agency, "Strengthening Victim Services in California: A Proposal for Consolidation, Coordination, and Victim-Centered Leadership," p. 4.
- <sup>10</sup> Department of Health Services, Maternal and Child Health Branch, "Organizational Chart," Sacramento, California, March 2004.
- <sup>11</sup> California State and Consumer Services Agency, "Strengthening Victim Services in California: A Proposal for Consolidation, Coordination, and Victim-Centered Leadership," p. 3.
- <sup>12</sup> Office of Emergency Services, Victim Services Branch, "Organizational Chart."
- <sup>13</sup> State of California Victim Compensation and Government Claims Board, "Annual Report July 1, 2002–June 30, 2003," pp. 57–59.
- <sup>14</sup> California State and Consumer Services Agency, "Strengthening Victim Services in California: A Proposal for Consolidation, Coordination, and Victim-Centered Leadership," p. 24. This list of responsibilities was taken with permission from this report.
- <sup>15</sup> The DPSHS will also include OES. It is expected that all grant-related staff within DPSHS will be cross-trained to administer emergency grants during a disaster.
- <sup>16</sup> California State and Consumer Services Agency, "Strengthening Victim Services in California: A Proposal for Consolidation, Coordination, and Victim-Centered Leadership," p. iii.

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# California Military Department (California National Guard)

## **Summary**

The California Military Department is a critical part of California's public safety and homeland security capability. To ensure that the state continues to maintain this capability, the California Military Department should remain as a stand-alone department, but closely coordinated with other public safety and homeland security entities.

## **Background**

The California Military Department is established in statute.<sup>1</sup> It consists of the office of the Adjutant General, the California National Guard, the State Military Reserve, the California Cadet Corps and the Naval Militia. It is responsible for the command, leadership and management of the California Army and Air National Guard, whose purpose is to provide military service support to California and the nation.

## **Mission**

At the direction of the President of the United States and the Governor of California, the mission of the California National Guard is to, "Provide mission ready forces to the federal government and protect the public safety of the citizens of California by providing military support to civil authorities during natural disasters and other emergencies and provide service and support to the local communities in which we work and live."<sup>2</sup>

The California National Guard has both a federal and state mission. The United States Constitution establishes a "well regulated militia, being necessary to the security of a free state."<sup>3</sup> The California Constitution states, "The Governor is commander in chief of a militia that shall be provided by statute. *The Governor may call it forth to execute the law.*"<sup>4</sup> Because of this dual role, the National Guard is available to the Governor for use in times of natural or man-made disaster or other emergencies and the preparations thereof. Additionally, the President may mobilize individuals and units of the National Guard to assist in worldwide military operations or to assist in domestic emergencies. Currently, about 4,300 Guard members are serving on federal active duty in Operations Noble Eagle, Enduring Freedom, and Iraqi Freedom.<sup>5</sup>

The Military Department is headed by the Adjutant General, a military officer in the rank of Major General appointed by the Governor and serving as his military chief of staff, director of the Military Department and commander of all state military forces.<sup>6</sup> The Adjutant General is subordinate only to the Governor.<sup>7</sup> The Military Department is organized with an Assistant Adjutant General as the second in command and consists of three divisions, Army, Air and

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Joint Staff, each headed by a Deputy Adjutant General. The current-year federal budget for the California National Guard is \$607 million and state general fund budget is \$38 million.<sup>8</sup> The California National Guard consists of over 21,000 service members, with a full-time combined state and federal workforce in excess of 4,300 personnel. Furthermore, the State Military Reserve and Naval Militia consist of over 500 additional part-time state volunteers.

Because of its dual role, the National Guard is a unique organization of state government. The National Guard is funded, equipped and trained using 94.1 percent federal funds and 5.9 percent state funds.<sup>9</sup> The Governor, as Commander-in-Chief, has over \$3 billion of federal assets, including airlift, air-refueling, and fighter aircraft, search and rescue helicopters and fixed-wing aircraft, medium lift and general support helicopters, long-haul truck transportation, combat engineering assets, petroleum and fuel transportation and distribution, power generation assets, water purification and transportation assets, and many other specialized equipment types.<sup>10</sup> The National Guard has 118 armories, 10 air bases, and three army bases located throughout California. Essentially, the Governor has at his disposal a ready force of nearly 22,000 Guard service members capable of quickly providing a wide range of emergency response capability. However, the National Guard is generally used as an option of last resort for emergencies and disaster response.<sup>11</sup>

The National Guard is able to meet many different hazard responses and needs. Its broad base of resources and depth of personnel and equipment make it a very good general response agency. It is a multi-faceted force of full and part-time service members, available to the Governor and other civil authorities. When large numbers of troops are required, the mission focus is normally general in nature, such as when the National Guard was called to assist in the Los Angeles Riots of 1992, where over 10,000 Guard members were mobilized to support law enforcement. As the requirements become more specific, the force is usually smaller and much more specialized, such as when called to respond to floods and fires. The National Guard currently provides a significant component of California's homeland security planning and training. The Guard is the state executive agent for local responder training for weapons of mass destruction response throughout the state, in addition to related training programs and other homeland security functions.<sup>12</sup>

The California National Guard is capable of responding to any homeland security needs and has the capacity to access resources and personnel from other states, as well as federal resources, increasing the number of specialties and personnel well beyond its own numbers.<sup>13</sup> This flexibility, coupled with its highly trained and well-equipped force, position the Guard as California's premier force capable of supporting and operating with first responders throughout the state. Its exemplary record of military support to civil authorities qualifies it to be a significant component in coordinating and integrating military power to support the public safety and homeland security needs of California.



### **Recommendation**

**The Military Department/California National Guard should remain as a stand-alone department closely coordinated with other public safety and homeland security entities. The Military Department/California National Guard should sustain its command relationship to the Governor, but have an administrative and training relationship to these entities.**

This provides direct command and control by the Governor, while increasing coordination, information sharing and interoperability with consolidated state public safety and homeland security assets and capabilities.

### **Fiscal Impact**

The Military Department would achieve some efficiencies in its current support of homeland security activities in both the Office of Homeland Security and in the California Anti-Terrorism Information Center, as well as new efficiencies in coordination and interoperability, including communications systems, safety equipment and training. The enhanced relationship with other public safety and homeland security entities would eliminate duplication and standardize many activities including training, grant administration and increased coordination. Although efficiencies are anticipated, it is not possible to quantify the benefits of this improved coordination. Qualitative improvements would be achieved in terms of common goal alignment and better protection and safety of California citizens through enhanced coordination and cooperation in state government.

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### **Endnotes**

- <sup>1</sup> Mil. & Vet. C. Sections 50 & 51.
- <sup>2</sup> California National Guard, "Mission Statement," <http://www.calguard.ca.gov/capl/> (last visited June 11, 2004).
- <sup>3</sup> U.S. Const., art. II.
- <sup>4</sup> Cal.Const., art. V, Section 7.
- <sup>5</sup> Interview with Colonel James Chapman, comptroller, Military Department (March 9, 2004).
- <sup>6</sup> Mil. & Vet. C. Section 160.
- <sup>7</sup> Mil. & Vet. C. Section 160.
- <sup>8</sup> State of California, Governor's office, "Governor's Budget," <http://www.documents.dgs.ca.gov/osp/GovernorsBudget05/pdf/gg.pdf> 2003–04 (last visited June 11, 2004).
- <sup>9</sup> State of California, Governor's office.
- <sup>10</sup> Telephone Interview with Colonel Charles Bourbeau, United States property and fiscal officer for California, and Colonel James McMenamin, director of Resources, California Air National Guard (March 23, 2004).
- <sup>11</sup> Interview with COL Donald Currier, Force Integration readiness officer, California Army National Guard, Sacramento, California (June 18, 2004).
- <sup>12</sup> Interview with COL Donald Currier, Force Integration readiness officer, California Army National Guard, Sacramento, California (June 18, 2004).

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<sup>13</sup> *Interview with COL Donald Currier, Force Integration readiness officer, California Army National Guard, Sacramento California (June 18, 2004).*



# Peace Officer Statutory Review

## **Summary**

The Department of Social Services employs peace officers whose jobs involve minimal law enforcement activity. The state should reclassify these positions to non-peace officer positions. The state also should review other peace officer positions within non-public safety entities to ensure they meet appropriate law enforcement criteria.

## **Background**

The various duties and responsibilities of peace officers are generally described in the Penal Code.<sup>1</sup> Determining which state employees should be classified as peace officers, however, is more complex. There are many criteria used to determine if a state agency's activities constitute "law enforcement" such that employing peace officers is justified.

The California Commission on Peace Officer Standards and Training (POST) is required to evaluate the merits of most departmental requests to establish new state peace officer positions.<sup>2</sup> Some of the criteria POST uses when determining a department's need for peace officers include the number of arrests made by the department, whether it conducts criminal or civil investigations, the number of criminal cases filed and whether the department prepares and executes search warrants. POST also looks at the nexus between duties assigned and actual activities and whether the department keeps statistics on its law enforcement activity.<sup>3</sup> In addition, POST requires a law enforcement command structure for departments seeking to establish new peace officer positions. This means peace officers must be supervised by a chief law enforcement officer who also is a peace officer.<sup>4</sup>

Another way to evaluate whether an employee should be classified as a peace officer is to apply criteria the state has established for determining which employees qualify for enhanced retirement benefits. Job duties and functions for positions qualifying for peace officer retirement benefits have changed over time. The following factors have been considered at one time or another:

- Substantial responsibility for protecting people from physical violence or danger;
- Continuous responsibility for safeguarding public and private property;
- Response in emergency situations involving human life as a regular part of the job;
- At any time the employee may be placed into an extremely hazardous situation in order to assure the public is protected;
- There is a high priority for the employee to be in top physical condition; and
- The employee is required to be the first responder to emergency situations and has no right to refuse to respond.<sup>5</sup>

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Enhanced retirement benefits for peace officers were originally established in recognition of the employee's need to retire at a younger age with an adequate pension because of the physically demanding nature of the work required of them.<sup>6</sup>

The California Performance Review (CPR) reviewed most state departments with authorized peace officer positions to determine which state law enforcement personnel should be recommended for consolidation within a proposed state department of public safety and homeland security.

Each department was evaluated based on the following criteria:

- The scope of the department's or board's law enforcement responsibility;
- The statutory peace officer authority granted to the officers;
- The functions performed by the peace officers;
- The number of investigations, criminal filings and arrests made by the department or board;
- Funding dedicated to law enforcement functions and potential savings from consolidating them with other similar functions; and
- Political and stakeholder considerations.

The following department was found to have state employees classified as "peace officers" whose jobs involve minimal law enforcement activity. In addition, several are supervised by non-law enforcement personnel.

***Department of Social Services, Bureau of Investigation***

In 1973, the Legislature enacted the Community Care Facilities Act. The purpose of the Act was to establish a statewide system of community care for persons with mental and developmental disabilities, and socially dependent children and adults. In 1978, the Legislature established the Department of Social Services (DSS) within the Health and Welfare Agency. The Community Care Licensing Division was combined with several programs from the former Department of Benefit Payments to form DSS.

It is the mission of the Community Care Licensing Division to promote health, safety, and quality of life of each person in community care through the administration of an effective collaborative regulatory enforcement system. The division's roles and responsibilities are divided into three areas: prevention, compliance and enforcement.

The Community Care Licensing Division, Bureau of Investigation, is responsible for the division's law enforcement function. Enforcement is maintained through fines and civil penalties, non-compliance office conferences and administrative legal actions. The bureau has 100 peace officers assigned to various programs administered by the department and located in offices around the state. These peace officers conduct mostly civil and administrative





investigations for a variety of the department's care programs. Specifically, they investigate allegations of sexual and physical abuse and deaths that occur under suspicious circumstances. They also conduct criminal background investigations for licensing purposes and provide assistance to legal staff in preparing for administrative hearings.<sup>7</sup>

The director of DSS prohibits them from carrying firearms and from making arrests. In addition, the peace officers are not supervised by a chief law enforcement officer.<sup>8</sup> The Bureau received 9,129 referrals during the period of 2001 through 2003. Between 2001 and 2004, bureau investigators filed an estimated 23 criminal complaints and made no arrests. These figures are estimates, as the department does not track its criminal complaints.<sup>9</sup>

### **Recommendations**

- A. The Department of Social Services, or its successor, should work with the Department of Personnel Administration, or its successor, to reclassify its peace officer positions to non-peace officer positions.**

The peace officers employed by DSS are investigators who conduct mostly civil and administrative investigations. They are prohibited from carrying firearms and from making arrests and they report to a non-peace officer supervisor. Out of more than 9,000 complaints received for investigation, they filed an estimated 23 criminal complaints. As such, their duties are inconsistent with the many criteria used to determine peace officer status.

The peace officer status of these positions should be eliminated through attrition. As existing incumbents leave the positions, they should be replaced with non-peace officers.

- B. The Governor should seek legislation to repeal the Department of Social Services' authority to appoint peace officers.**
- C. The Governor should direct the Department of Personnel Administration, or its successor, to work with the California Commission on Peace Officer Standards and Training to review authorized state peace officer positions employed by non-public safety entities to ensure their duties conform to POST standards.**

### **Fiscal Impact**

As a result of these recommendations, there is no anticipated short-term fiscal impact for the state's General Fund. Currently filled peace officer positions that are with the DSS will retain their peace officer status, but as they are vacated, the position classifications would be converted to appropriate non-peace officer classes.

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Depending on the new classifications used, anticipated long-term savings would result by converting the positions from peace officer to non-peace officer status. For example, if the Analyst series is used instead of the Investigator series for these positions, the state would potentially gain nearly \$10,000 annually for every Special Investigator position converted to the Staff Services Analyst classification.

The reclassified positions would also be converted from the peace officer retirement system to the miscellaneous retirement system. Therefore, additional savings would be realized because the employees would not be eligible for the enhanced retirement benefits now provided to retiring peace officers. Minimal savings would also be achieved due to the reduction of peace officer training as mandated by the Commission on Peace Officer Standards and Training.

Since the timing of attrition cannot be predicted, it is not possible to present a schedule of savings.

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## Endnotes

- <sup>1</sup> California Pen. C. Section 830 et seq.
- <sup>2</sup> California Pen. C. Section 13540.
- <sup>3</sup> Interview with Jack Garner, bureau chief, California Commission on Peace Officer Standards and Training, Sacramento, California (June 14, 2004).
- <sup>4</sup> California Pen. C. Section 13542; and interview with Jack Garner, Sacramento, California (June 22, 2004).
- <sup>5</sup> California Public Employees' Retirement System, Agenda Item 5, October 16, 2001.
- <sup>6</sup> California Public Employees' Retirement System, Agenda Item 5.
- <sup>7</sup> California Department of Personnel Administration, Special Investigator Job Specifications, <http://www.dpa.ca.gov/textdocs/specs/s8/s8557.txt> (last visited June 23, 2004); and interview with Sophie Cabrera, chief, Investigations Bureau, Department of Social Services, Sacramento, California (March 10, 2004).
- <sup>8</sup> Interview with Sophie Cabrera.
- <sup>9</sup> Interview with Sophie Cabrera.



# Information Analysis and Infrastructure Protection Assessment

## **Summary**

Law enforcement information analysis and infrastructure protection assessment functions are currently spread throughout several, often competing state agencies. In some cases, these functions are woefully inadequate, often because they are under funded. Public Safety and Homeland Security entities must have information analysis and infrastructure protection assessment capabilities, and current state efforts should be consolidated.

## **Background**

After the September 11, 2001 terrorist attacks on the United States, the federal government reorganized its homeland security functions into the Department of Homeland Security. This brought together law enforcement, emergency preparedness and response, science and technology, and information analysis and infrastructure protection disciplines.

Critical to their efforts was the establishment of a central point of information analysis and intelligence. This central activity functions as the fusion point for all aspects of homeland security information and intelligence. It allows for dissemination of vital information both within the organization and to other federal, state and local entities.

## **California's current situation**

California's information analysis and infrastructure protection assessment functions are distributed throughout various agencies and departments within state government. The California Department of Justice has the California Anti-Terrorist Center (CATIC), which was created by the Governor and the Attorney General. The California Office of Emergency Services and the California Highway Patrol, in cooperation with federal agencies, have a team in place at the State Warning Center that allows law enforcement to check the federal terrorist watch status of suspects. Other state agencies and departments have additional, often competing functions. In some cases, these efforts are woefully inadequate, often because of insufficient resources.

There is little coordination and communication between entities. Local allied agencies complain of confusion and disjointed information and a general lack of coordination and response from the myriad of state entities involved in anti-terrorist information and analysis. Law enforcement officers on the street cannot access a central information point to get operationally immediate information about possible terrorist suspects or threats. Moreover, there is no single state department or agency that can provide both information on possible

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threats and operational support resources to respond or to protect critical infrastructure targets.<sup>1</sup>

***The need for information analysis and infrastructure protection assessment***

Information is key to solving crimes and preventing terrorist events. It must be collected, analyzed, evaluated, and disseminated accurately and quickly. Information and intelligence are highly perishable and operationally significant. This makes it all the more critical that threats to public safety and security be assessed quickly, and relevant information delivered rapidly and securely to operational forces that can act to prevent, deter, preempt or respond to those threats. Information must also be protected from unauthorized disclosure while maintaining the civil rights of Californians.

A central information analysis and infrastructure protection assessment entity must also be able to respond quickly to requests for information from local and state law enforcement agencies and other allied agencies and departments. It must have access to the federal Department of Homeland Security and be the direct conduit of information flow from that agency to all state, local and federal law enforcement and public safety entities. This will ensure that those entities have access to real-time, usable information.

This requires one central, coordinated activity in state government, tasked with information analysis and infrastructure protection assessment and given the necessary resources to fulfill its mission. Key decision-makers must have timely information and be able to act on it quickly. A central information analysis entity should report directly to an individual who, in turn, reports directly to the Governor.

***Recommendation***

**The Governor should consider consolidating all law enforcement information analysis and infrastructure protection assessment into an Office of Information, Analysis and Assessment.**

In the interest of the state's public safety and homeland security, there must be a central repository for information and also the ability to analyze and evaluate that information in order to take the necessary steps to ensure public safety and security. This unit must be able to collect information from federal, state and local entities and to disseminate information to those entities. It must have access to the U.S. Department of Homeland Security and be the conduit of information to and from that agency for state and local public safety entities within California.

The following functions should be incorporated in the information analysis and infrastructure protection assessment section.



- *Threat assessment:* Identify and assess the nature and scope of terrorist threats to the state; detect and identify threats of terrorism against the state; and understand such threats in light of actual and potential vulnerabilities of the state.
- *Information/intelligence coordination:* Coordinate information and intelligence activities for public safety and homeland security activities. Make recommendations for improvements in policy and procedure governing the sharing of information and intelligence within state government and to allied agencies and entities.
- *Anti-terrorist information and intelligence analysis:* This includes the ability to access USDHS information systems and be the sole-source conduit for this information throughout the State of California.
- *Vulnerability assessment:* Integrate relevant information analyses, and vulnerability assessments (whether produced by the department or others) in order to identify priorities for protective and support measures by the department, other state and local agencies and other entities.
- *Information dissemination:* Disseminate information analyzed by the state's public safety and homeland security departments to other agencies of the state, to federal agencies and entities, to local agencies and to private sector entities that will assist in deterring, preventing, preempting or responding to terrorist attacks or activities. Ensure timely and efficient access by the department to all information necessary to ensure the safety and security of California. Consult with local agencies and private sector entities to ensure information is exchanged appropriately.
- *Support:* Provide information/intelligence and infrastructure protection assessment that supports other elements of the department.

### ***Fiscal Impact***

The integration of information/intelligence analysis functions from other state entities should produce some fiscal savings based on economies of scale and combined functions and support, although the actual savings are undetermined at this time. Therefore, the net fiscal impact of this proposal is unknown.

Based on the assumption that this office will consist of staff and resources (including information technology equipment and resources) from existing state law enforcement departments currently involved with information/intelligence analysis functions, the need for additional funding should be minimal. Since most of the staff is already centrally located, it is anticipated that few employees, if any, will need to personally move, which will reduce relocation costs.

Anticipating a range of 40–75 employees needed to staff this new office, it is estimated that \$212,000–\$397,500 would be needed on a one-time basis to move the office operations and co-locate the staff.

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Once the office has been established, the need for additional full time personnel will be reduced through the use of task forces, working on time specific projects. Borrowing staff on a temporary basis will impact the productivity of the lending departments and will also generate costs associated with temporary assignments.

Future funding may be needed for information technology systems and equipment once the office has been established and an assessment can be made of available resources and the significant security needs associated with the collection, analysis and dissemination of information.

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## Endnotes

- <sup>1</sup> California State Auditor, *"Terrorism Readiness: The Office of Homeland Security, Governor's Office of Emergency Services, and California National Guard Need to Improve Their Readiness to Address Terrorism,"* Report No. 2002-117 (Sacramento, California, July 2003), pp. 19-21.





# Consolidate the Department of Health Services Medi-Cal Fraud Investigations Branch

## **Summary**

Numerous problems exist within the Department of Health Services' Medi-Cal Fraud Investigation Branch (DHS-IB). They stem mainly from the disproportionate assignment of investigators throughout the state, the discontinuance of required continuing professional training (CPT), and from oversight of a law enforcement unit by non-law enforcement personnel. DHS-IB should be consolidated into the newly proposed Department of Public Safety and Homeland Security (DPS&HS).

## **Background**

Medi-Cal is a federal-state program to provide health care to certain low-income people who lack health care coverage. It is funded by the state's General Fund and by matching federal dollars, and is administered by the California Department of Health Services (DHS).

In recent years, Medi-Cal fraud has received a great deal of public attention. It is an ongoing battle to make sure that the people who receive benefits are actually entitled to them, and to ensure that providers—doctors, pharmacists and the like—do not intentionally overbill Medi-Cal.

## **Medi-Cal's police**

Both state and federal law mandate DHS-IB as the organization within DHS responsible for investigating allegations of beneficiary fraud and abuse of the Medi-Cal program. This includes criminal, civil and administrative investigations. California law gives the director of DHS the authority to conduct investigations and appoint peace officers to investigate, arrest and prosecute individuals who defraud the Medi-Cal program.<sup>1</sup>

DHS-IB falls under the Department of Health Services' Audits and Investigations Division.<sup>2</sup> The branch has four sections with a total of 15 investigations units throughout the state. DHS-IB is also responsible for coordinating the department's homeland security and anti-terrorism efforts, including security for a large laboratory in the San Francisco Bay Area. It has a total of 150 authorized positions, including 115 Fraud Investigators, 15 Supervising Fraud Investigator Is, 4 Supervising Fraud Investigator IIs, and the Chief. Fifteen Fraud Investigator positions are vacant.<sup>3</sup> All of DHS-IB's investigators, supervising investigators and chief are peace officers. Their authority extends to any place in the state in the performance of their primary duty.<sup>4</sup> Medi-Cal fraud investigators are required to carry firearms.

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In the course of their duties, investigators typically have contact with convicted felons, parolees-at-large and people with active arrest warrants. They also arrest people and execute search warrants, make on-sight arrests for drug violations, and investigate organized crime cartels involved in Social Security or Medicaid/Medi-Cal fraud. In addition, they investigate organized crime rings involved in diverting pharmaceuticals to foreign countries and perform homeland security and anti-terrorism functions.

During 2003, DHS-IB investigators had face-to-face contact with 28,000 applicants for Medi-Cal benefits, more than 40 percent of whom were denied because they fraudulently provided false information. DHS-IB investigators conducted 5,800 fraud investigations during 2003, leading to 241 state and federal criminal cases.<sup>5</sup> More than 100 people were arrested by DHS-IB investigators in 2003, as well.

***Different missions: law enforcement and human services***

Some employees have claimed that the leadership of DHS discourages making arrests and filing criminal complaints because those activities are not in line with the department's social service mission.<sup>6</sup> In fact, law enforcement is a secondary function of the California Department of Health Services. DHS-IB falls under the larger Audits and Investigations Division. This creates a situation where law enforcement efforts are overseen and managed by non-law enforcement personnel. As a result, decisions affecting officer safety, law enforcement equipment needs, and policies and procedures can be based on an incomplete understanding of all the issues involved.

***Management problems***

The majority of DHS-IB's investigators are based in Sacramento (23 percent), Los Angeles (51 percent) and San Diego (22 percent). This distribution fails to provide an acceptable level of service to the San Francisco Bay Area and to rural areas of the Sacramento and San Joaquin valleys.<sup>7</sup>

There are only ten investigators based in Fresno and Bakersfield, and they are responsible for the area between the Grapevine near Bakersfield in the south to Turlock in the north, and from the coast to the Nevada border. Sacramento area investigators are responsible for the area from Turlock to the Oregon border, and from the coast north of Monterey to the Nevada border. Two investigators are assigned to the U.S. Social Security Administration's Cooperative Disability Investigation task force.<sup>8</sup>

Compounding this problem is the restriction imposed in investigators' travel. Travel involving per diem has been severely restricted, both as a result of a Governor's Executive Order and the interpretation of that order by DHS management.<sup>9</sup> As a practical matter, fraud outside a radius of about 100 miles from district offices does not get investigated.



The Bureau of State Audits has noted that DHS has not developed a strategy that coordinates antifraud activities or systematically evaluated the effectiveness of those efforts. The report further states that DHS is lacking an individual or team with the responsibility and authority to ensure worthwhile recommendations are tracked and implemented. Such an individual or team would ensure that antifraud proposals, including external entities, are addressed promptly.<sup>10</sup>

### ***Training problems***

The Commission on Peace Officer Standards and Training (POST) requires a minimum of 24 hours of continuing professional training every two years.<sup>11</sup> In the past, these requirements were met by teaching POST-certified courses during advanced officer training sessions. DHS-IB, claiming lack of resources, combined with the slim likelihood of a compliance inspection by POST, has not conducted advanced officer training in several years. As a result, on June 16, 2004, 35 of the 135 peace officers (33.3%) were out of compliance with POST's training requirements.<sup>12</sup> Failure to comply with CPT requirements unnecessarily exposes the department to increased civil and criminal liability.

### ***Problems with Homeland Security functions***

The Department of Health Services operates a large laboratory in the San Francisco area which is frequently referred to as "CDC-West" (Centers for Disease Control for the western United States). Among the laboratory's functions are the collection, identification, analysis and testing of chemical, biological, and radiological agents that may be used by terrorist groups in attacks against California's population and infrastructure. Additionally, the laboratory maintains a significant amount and number of chemical, biological and radiological agents, or "select agents."<sup>13</sup>

Despite the potential attractiveness of the laboratory as a target, DHS does not participate in the FBI's Joint Terrorism Task Forces, which provide access to criminal intelligence. This intelligence is vital to be able to effectively assess threats against, and prevent terrorist attacks of, the facility.

### ***The need for consolidation***

Consolidating DHS-IB into the newly proposed Department of Public Safety and Homeland Security would enable more effective, more efficient statewide investigation of Medi-Cal fraud. Consolidation would likely result in long-term savings from lower administration costs and from the increased purchasing power enjoyed by larger entities. It would also reduce the state's criminal and civil liability by ensuring compliance with POST training requirements, and it would make an additional 150 peace officers immediately available for deployment in the event of terrorist attack or other such emergency.

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Consolidating a small law enforcement unit creates enhanced service and efficiency, budget savings and standardization of policies, procedures and training, as was demonstrated in the 1995 consolidation of the California State Police into the California Highway Patrol.<sup>14</sup>

### **Recommendation**

**The Governor should work with the Legislature to transfer Department of Health Services' Medi-Cal Fraud Investigation Branch (DHS-IB) in order to be merged with other public safety entities.**

Specific authority granted to the Medi-Cal fraud investigators, such as access to confidential medical records, should be maintained in order for them to continue investigating Medi-Cal fraud.

### **Fiscal Impact**

The Investigations Branch budget is \$14.2 million. The functions to be consolidated will come intact with their respective personnel and budget appropriations. It is anticipated that any positions needed to support the functions will become available as a result of the efficiencies generated by the consolidation. This includes the resources needed to support the oversight office for grant administration.

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### **Endnotes**

- <sup>1</sup> Gov. C. Section 11180 et seq., <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=11001-12000&file=11180-11191> (last visited June 21, 2004).
- <sup>2</sup> Website information from DHS available at <http://www.dhs.ca.gov/ane> (last visited June 4, 2004).
- <sup>3</sup> California Department of Finance's salary and wage information (Fiscal Years 2002–2005), <http://www.osp.dgs.ca.gov/On-Line+Publications/Salaries+and+Wages+Supplement+2004-2005.htm> (last visited June 21, 2004).
- <sup>4</sup> Fraud Investigator Specifications, California Department of Personnel Administration, <http://www.dpa.ca.gov/textdocs/specs/s8/s8064.txt> (last visited June 4, 2004).
- <sup>5</sup> Interview with Larry Malm, chief, DHS, A&I Division, Investigations Branch, Sacramento, California (March 9, 2004) (statistical information is approximate).
- <sup>6</sup> Interview with W.B. Edwards, senior section chief, DHS-IB, San Diego, California (June 4, 2004).
- <sup>7</sup> Organization chart provided by Diana Ducay, deputy director, Audits and Investigations Division, California Department of Health Services, March 1, 2004.
- <sup>8</sup> Organization chart provided by Diana Ducay, deputy director, Audits and Investigations Division, California Department of Health Services, March 1, 2004.
- <sup>9</sup> Governor's Executive Order S-4-03, December 5, 2003; and California Department of Finance, Budget Letter 03-43, "Contract, Equipment Acquisition and Travel Ban," December 5, 2003.



- <sup>10</sup> Bureau of State Audits report No. 2003-112, December 2003, "DHS: It Needs a Better Plan and Coordinate Its Medical Antifraud Activities," <http://www.bsa.ca.gov/bsa/summaries/2003-112.html> (last visited June 4, 2004).
- <sup>11</sup> POST Administrative Manual, Section 1005(d), Title 11, Division 2, California Code of Regulations, established by authority of Pen. C. Section 13500 et seq., <http://www.post.ca.gov/siteMap/default.asp#regulations> (last visited June 21, 2004).
- <sup>12</sup> Commission on Peace Officer Standards and Training, "Compliance Analysis Report, Department of Health Services," run date June 16, 2004.
- <sup>13</sup> "Select agents" include approximately 40 viruses, bacteria and other toxins that the U.S. Centers for Disease Control consider extremely dangerous. A complete list is available at <http://www.cdc.gov/od/sap/42cfr72.htm> (last visited June 18, 2004).
- <sup>14</sup> Little Hoover Commission, "Report No. 130" (Sacramento, California, March 16, 1995), <http://www.lhc.ca.gov/lhcdir/130rp.html> (last visited June 4, 2004).







# Create a California Hazard Mitigation Advisory Council

## **Summary**

Hazard mitigation programs are spread across several state departments and commissions. Each was created as a solution to a specific hazard, but the piecemeal approach to hazard mitigation has created inefficiencies in program administration, competition for federal grants and confusion among stakeholders. A California Hazard Mitigation Advisory Council would allow a strategic government-wide approach to directing the state's hazard mitigation efforts.

## **Background**

There are more than 11 hazard mitigation programs within eight different state government departments and commissions. Hazard mitigation is the cornerstone of emergency management and is defined as, "any sustained action taken relative to hazards which reduce or eliminate the long-term risk to human life and property."<sup>1</sup> It involves assessing risks within the natural environment and analyzing the vulnerability of infrastructure. Hazard mitigation works. After conducting 16 hazard mitigation case studies, the Federal Emergency Management Administration (FEMA) concluded, "... they clearly demonstrate that loss of lives and property can be reduced through cost effective mitigation measures ..."<sup>2</sup>

Since 1950, state proclaimed and federally declared disasters in California have taken 860 lives, caused 4,822 injuries and accounted for more than \$64 billion in damages.<sup>3</sup> The 1994 Northridge Earthquake caused 61 deaths, 1,500 injuries and more than \$40 billion in losses.<sup>4</sup> The California Fire Storms of 2003 cost the lives of 24 people and destroyed 3,631 homes.<sup>5</sup> The 1990s brought severe flooding in all 58 counties killing 79 people and causing approximately \$5 billion in losses.<sup>6</sup> The impacts upon the citizens, communities, businesses and economy go far beyond the statistics.

Twenty-two states have successfully mitigated hazards through state hazard mitigation councils, including New York, Texas and Illinois. These councils guide the direction of public policy related to hazard mitigation activities. The states that have hazard mitigation councils believe they are an effective tool for implementing mitigation strategies. Funding did not appear to be an issue in the development of mitigation councils since the states used existing budgets, federal grants or some combination of the two.<sup>7</sup>

The Disaster Mitigation Act of 2000 requires states to produce and formally adopt a state hazard mitigation plan, to be approved by FEMA no later than November 1, 2004, in order to remain eligible for federal disaster recovery and hazard mitigation funds. The law also

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requires that the state involve state and federal agencies, local communities and other interested parties in the planning process.<sup>8</sup>

Approval and adoption of the state hazard mitigation plan by a California Hazard Mitigation Advisory Council would help fulfill federal requirements and enhance the security of the state through coordinated hazard mitigation.

### ***Recommendation***

**The Governor should create a California Hazard Mitigation Advisory Council by Executive Order or through his authority in the Emergency Services Act to coordinate existing hazard mitigation programs and develop a statewide hazard mitigation strategy.**

The California Hazard Mitigation Advisory Council will provide valuable advice to the Governor and/or the Director of the Governor's Office of Emergency Services (OES) by managing the development of a statewide hazard mitigation strategy. The primary goals of the California Hazard Mitigation Advisory Council should include:

- Leading and coordinating federal, state, local, and private hazard mitigation programs, policies, and activities within California.
- Creating of a viable state hazard mitigation program.
- Reviewing, approving and adopting the state hazard mitigation plan to fulfill federal regulations and retaining federal funding.<sup>9</sup>

### ***Fiscal Impact***

There is no anticipated General Fund cost from the creation of the council. The council will be composed of state departmental directors, Governor's staff, and other ranking decision-makers from the existing 11 hazard mitigation programs or their successors. It is estimated that the state will be able to fund the council within current budget levels of these programs. If additional funding is needed, grant funding from FEMA could be used to pay for items such as support staff, or other costs.

There is no anticipated short-term impact from the creation of the council; however, long-term savings could be gained from economies of scale, elimination of overlapping responsibilities, and a reduction in emergency response and recovery costs through efficiencies. Additionally, one of the primary responsibilities of the council will be the coordination of the federal grant process. Federal funding is vital to hazard mitigation; over the last 10 years, California received approximately \$9 billion in federal funding. The council will assure that the state is in compliance with federal mandates and regulations as noncompliance could result in the loss of federal grants.



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## Endnotes

- <sup>1</sup> National Governor's Association, Volume One, "Natural Disasters, A Governor's Guide to Emergency Management" (2002), p. 16; and Code of Federal Regulations, 44 CFR 201.2.
- <sup>2</sup> Federal Emergency Management Agency, "Report on Costs and Benefits of Natural Hazard Mitigation" (Washington, D.C.), p. 50.
- <sup>3</sup> California Office of Emergency Services, "Draft State of California Multi-Hazard Mitigation Plan" (Sacramento, California, 2004).
- <sup>4</sup> California Department of Conservation, California Geological Survey, "Northridge Earthquake Ten-year Anniversary" (Sacramento, California, June 16, 2004), [http://www.consrv.ca.gov/cgs/geologic\\_hazards/earthquakes/northridge.htm](http://www.consrv.ca.gov/cgs/geologic_hazards/earthquakes/northridge.htm).
- <sup>5</sup> California Office of the Governor, Blue Ribbon Fire Commission, "Governor's Blue Ribbon Fire Commission Report to the Governor" (Sacramento, California, 2004), p. i.
- <sup>6</sup> California Office of Emergency Services, "Draft State of California Multi-Hazard Mitigation Plan" (Sacramento, California, 2004), Chart 6.1A.
- <sup>7</sup> National Emergency Management Association, State Hazard Mitigation Councils, "An Effective Tool in Implementing Mitigation Strategies in the States" (February 2000), p. 2.
- <sup>8</sup> Disaster Mitigation Act of 2000, Public Law 106-390.
- <sup>9</sup> Code of Federal Regulations, 44 CFR 201.4.

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# Establish a Contingency Fund for the Director of the Governor's Office of Emergency Services

## **Summary**

California's Office of Emergency Services often finds it difficult to coordinate responses during the initial phases of emergencies. Until the Governor proclaims a state of emergency, the Office of Emergency Services has no authority to direct the resources of other agencies to reimburse participating agencies. Without such funding, agencies may be reluctant or unable to provide resources. Establishing a contingency fund for the Office of Emergency Services to reimburse agencies for pre- and post-proclamation response activities would mean better emergency management.

## **Background**

The California Office of Emergency Services (OES) works with other state agencies to respond to emergencies that occur in the state. California spends about \$31 million a year through OES to respond to emergencies. During the initial phases of an emergency, opportunities exist to save lives and reduce injuries and damage.

OES has no authority to direct and coordinate the efforts of responding agencies until the Governor has proclaimed a state of emergency, nor does it have any funding to reimburse agencies responding during the initial phases of an emergency. This makes it difficult for OES to coordinate the activities of various state and local agencies in the hours and days before the Governor proclaims an emergency.<sup>1</sup>

Interviews conducted by the California Performance Review with various emergency management agencies found that the early release and movement of resources is mainly impaired by a lack of funding.<sup>2</sup> Without funding, agencies are reluctant to provide resources because of tight budgets. In addition, a representative of the Federal Emergency Management Administration indicated California's emergency responses would improve significantly if funding was available prior to an emergency proclamation.<sup>3</sup>

The experience of the California Department of Water Resources (DWR) following the 2003 Southern California firestorms illustrates the point.

The DWR's Flood Management Division was concerned about potential flooding in the fire areas because of weather forecasts predicting heavy rainfall. DWR maintains flood-fight caches of sand bags, plastic sheeting, shovels, and other equipment necessary to fight floods for three

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days. DWR wanted to move one cache from Northern California to Southern California. Because there was no emergency proclamation to provide funds, other state agencies were reluctant to provide transportation services. Consequently, DWR arranged for shipping via an existing contractor. This made it more expensive than if state resources had been used because modifications outside the scope of the existing contract were required. The severe weather predicted to arrive was not as severe as anticipated, and the flood-fight cache arrived in time to be useful, about two weeks later. Still, the fire-ravaged areas of Southern California were left vulnerable for two weeks.<sup>4</sup>

### ***Contingency funds used by the Department of Forestry and Fire Protection***

At the beginning of each year the California Department of Forestry and Fire Protection (CDF) receives an appropriation for its emergency activities in the Budget Act. Expenditures usually exceed funding allocations; therefore, a request must be submitted to the Department of Finance to augment depleted funds. This can be a complicated and lengthy process, but CDF has the funds it needs when it needs them and operations are not delayed waiting for funding approval.<sup>5</sup>

### ***Recommendation***

**The Governor should work with the Legislature to establish a contingency fund set at 50 percent of the average annual state expenditures on emergencies services, which would be about \$15 million, to reimburse state agencies utilized in pre-proclamation periods of emergencies. These funds should be allocated to and administered by the Director of OES.**

### ***Fiscal Impact***

State agencies already incur annual emergency response costs; therefore, because the initial funding would be set at 50 percent of the average annual expense, there would be no increased cost to the state.

The administration of a contingency fund would save the state money through efficiencies from streamlined responses, and a reduction of property and infrastructure damage. Additionally, the anticipated faster response time in providing assistance in emergencies could potentially save lives.

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## **Endnotes**

- <sup>1</sup> California Performance Review, "Emergency Management Questionnaire," Sacramento, California, Spring 2004, Summary of answers to questions 23 and 24; and interviews with Dallas Jones, director, Frank McCarton, chief deputy director, Grace Koch, program manager, Governor's Office of Emergency Services, Sacramento, California (March 24, 2004).
- <sup>2</sup> California Performance Review, "Emergency Management Questionnaire," Summary of answers to questions 23 and 24.





- <sup>3</sup> Interviews with Kevin Clark, emergency analyst, Office of the Regional Director; Nancy Ward, director, Response and Recovery Division; Sally Ziolkowski, director, Federal Insurance and Mitigation Division; Jack Brannan, director, Administration and Resource Planning Division; Thomas Ridgeway, program coordination branch chief, National Preparedness Division; and Kenneth Chin, technological services team leader, National Preparedness Division, Federal Emergency Management Agency, Region IX, San Francisco, California (April 20, 2004).
- <sup>4</sup> Interviews with Sonny Fong, Emergency Preparedness manager; and Jatinder Punia, chief, Flood Operations, California Department of Water Resources, Sacramento, California (May 5, 2004).
- <sup>5</sup> Interview with Cindy Shamrock, deputy director, Management Services, California Department of Forestry and Fire Protection, Sacramento, California (May 5, 2004).

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# Change Existing Law to Help the Investigations Unit Within the California Employees' Retirement System to Prosecute Disability Fraud Cases

## **Summary**

The California Public Employees' Retirement System (CalPERS) maintains an Investigations Unit that employs seven full-time investigators. The unit's primary function is to review those disability claims where there are indicators of possible fraud or abuse. Current law hinders their ability to investigate and prosecute disability fraud cases, and is inconsistent with laws governing other state agencies' anti-fraud units. State statutes should be amended to assist the CalPERS Investigation Unit in investigating and prosecuting disability fraud.

## **Background**

The California Public Employees' Retirement System (CalPERS) administers retirement and health benefits to more than 1.4 million past and present state and local government employees. This includes retirement, disability, and death benefits; administration of Social Security coverage for state employees; and the development, negotiation, and administration of contracts with a number of health maintenance organizations, group hospitals, and medical insurance plans.

Participants in the system's programs include state employees, classified school employees, volunteer firefighters, judges, legislators, and any other public employees whose employer has contracted for benefits administered by CalPERS.

CalPERS is managed by a Board of Administration (the Board) whose officers have a fiduciary duty to protect the trust fund from inappropriate payment of benefits. In 1992, voters approved Proposition 162, which gives the CalPERS Board plenary (complete) authority over the administration of CalPERS operations. The measure, in essence, gave the Board the sole and exclusive authority of the investment and administration of the system's resources, except for the health benefits program, which is funded from the Public Employees' Contingency Reserve Fund.<sup>1</sup> The Investigation Unit falls within the legal office under the administration branch and is therefore independently controlled by the CalPERS Board. The Penal Code defines the investigators as peace officers.<sup>2</sup>

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### ***CalPERS retirement benefits***

The basic types of retirement benefits CalPERS provides include:

- Service retirement or “normal” retirement for those eligible, based on age and years of service.
- Disability retirement for members who become disabled and can no longer perform duties of their jobs.
- Industrial disability retirement for eligible employees whose job-related injuries or illnesses resulted in disability.

Retirement benefits are computed using years of service, age at retirement and final compensation. A member’s retirement formula is calculated by the membership category, which is determined based on occupation; employing agency and Government Code; the contract between their employer and CalPERS; and tier in which the member is enrolled.<sup>3</sup>

### ***Current duties of the Investigation Unit***

Currently, the CalPERS Investigation Unit is comprised of one supervising special investigator, five senior special investigators and one special investigator. The unit’s major function is to investigate and, if necessary, prosecute disability retirement fraud. These types of cases are complex and sensitive because of the health issues associated with disability retirements.<sup>4</sup>

The following is a breakdown of the three major disability investigative functions performed by this unit:

- *Disability/Pre-Determination*—These cases involve people who are in the initial stages of the disability retirement process and there is some indication of possible fraud or abuse. Investigators can check these cases by verifying information in medical reports, conducting surveillance and contacting employer witnesses. Any additional information is then submitted to the examining doctors and CalPERS disability evaluation staff. This verification process may support the denial of non-meritorious claims.
- *Disability Appeals*—These are cases where CalPERS has denied a member’s application for disability retirement, and the member has appealed the decision and requested an administrative hearing. The legal office handles these hearings and often refers case information to the investigation unit for appropriate investigative action.
- *Reinstatements*—This type of case involves returning to work those people who are no longer disabled, often involving members who are in the public safety retirement category. These individuals, regardless of age or service, can collect half their salary and other “final compensation” for life if granted an Industrial Disability Retirement. After being approved for Industrial Disability Retirement, their condition may improve to the point they are capable of returning to work. An investigation may be conducted to determine if the member is no longer disabled.<sup>5</sup>



The Investigation Unit mostly focuses on Industrial Disability Retirement, as it normally pays out the highest level of benefits. Other state agencies with similar units include the California Highway Patrol, Department of Insurance and the Department of Corrections.

Oftentimes an investigation will uncover both workers' compensation fraud as well as disability fraud. The California Department of Insurance, for example, can use the Insurance Code to file charges of workers' compensation fraud.<sup>6</sup> CalPERS, however, must use more general Penal Code violations, such as presenting false claims, grand theft, or perjury since there are no specific codes for disability fraud. Some prosecutors may be reluctant to use these more general Penal Code sections to file charges in a disability fraud case, since they do not always reflect the true nature of the crime. As a result, violators are often charged only with a workers' compensation violation.

In some circumstances, even when a member is found guilty of Penal Code violations in a disability fraud case, the member may not lose their disability benefits. In order for a member to lose disability benefits, the worker must have a job offer and a start date from an employer.<sup>7</sup> This requirement has made it difficult to keep the member from receiving benefits or requiring the member to pay restitution.

In 1987, CalPERS estimated the average total savings resulting from the denial of a disability claim for a public safety member to be \$182,000.<sup>8</sup> The calculation was based on 18 cases of members claiming an Industrial Disability Retirement. These members had an average of six years of service and an average age of 34 at the time of their claims. If all 18 cases had been won on appeal or dropped by the member, the potential savings to the state would have been nearly \$3.3 million. It should be noted that the number of members who are eligible for safety retirement has increased substantially since this memorandum was prepared. For example, the number of sworn peace officers has increased significantly in the past 15 years within the Department of Corrections.

Therefore, every member who fraudulently obtains a disability benefit and is properly prosecuted could save the CalPERS Retirement Fund substantial funds, and to a lesser extent the state General Fund, which supplements the Retirement Fund.

### ***The validations system***

In 1996, a Disability Validation Team (DVT) was established at CalPERS, which included both Investigations Unit staff and Retirement Program Specialists. DVT utilizes a set of "yellow flag" indicators to better identify and prioritize cases for further review. Generally, all claims involving certain medical conditions (orthopedic, stress, and psychiatric, for example), or where claims are employer-originated and the member contests, are reviewed. The yellow flag indicators are a consolidated list of indicators compiled by a number of local and state agencies.

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## **Recommendations**

- A. The Governor should work with the Legislature to amend the Government Code to clearly define what constitutes disability retirement fraud, the penalties to be imposed and to deny or reduce retirement allowances for individuals convicted of disability retirement fraud.**

Amending the Government Code would make the law governing disability retirement fraud more consistent with laws regarding other types of fraud, such as workers' compensation fraud. It would also assist the CalPERS Investigation Unit in successfully prosecuting individuals for disability retirement fraud, and may provide a deterrent for CalPERS members.

- B. The Governor recommend to the CalPERS Board of Administration that it merge investigative functions under a unified state agency.**

## **Fiscal Impact**

While there are anticipated savings for the first recommendation as a result of program improvements, they cannot be estimated. The second recommendation could result in functions being consolidated and they would come intact with their respective personnel and appropriate budget appropriation. It is anticipated that any positions needed to support the functions will become available as a result of the efficiencies generated by the consolidation.

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## **Endnotes**

- <sup>1</sup> Department of Finance, *Governor's Budget 2004–05* (January 9, 2004), <http://www.documents.dgs.ca.gov/osp/GovernorsBudget05/pdf/scs.pdf> (last visited March 6, 2004).
- <sup>2</sup> Pen. C. Section 830.3(h).
- <sup>3</sup> California Public Employees' Retirement System, "CalPERS Retirement Benefits," <http://www.calpers.ca.gov/index.jsp?bc=/about/benefits-overview/retirement/retirement-benefits.xml> (last visited June 21, 2004).
- <sup>4</sup> Letter from Investigation Unit, CalPERS Legal Office to California Performance Review, Public Safety Team (March 10, 2004).
- <sup>5</sup> Letter from Steven Donald, chief investigator, California Public Employees' Retirement System to California Performance Review, Public Safety Team (March 10, 2004).
- <sup>6</sup> Ins. C. Section 1871.4.
- <sup>7</sup> Letter from Steven Donald, chief investigator, California Public Employees' Retirement System to California Performance Review, Public Safety Team (June 15, 2004).
- <sup>8</sup> Memorandum from Steven Donald, chief investigator, California Public Employees' Retirement System (CalPERS), to John Decker, legislative analyst, CalPERS (January 21, 1987).





# Medi-Cal Provider Fraud Investigations Should Be Done By the California Department of Justice

## **Summary**

By law, only the California Department of Justice (DOJ) has the authority to investigate and prosecute fraud by Medi-Cal providers, such as physicians and pharmacies. In reality, most of the investigative work is done by the California Department of Health Services in the guise of “preliminary investigations” before cases are referred to DOJ. The state is forfeiting more than \$1.6 million in federal reimbursements as a result.

## **Background**

Medi-Cal is California’s version of the Medicaid health care program. It is a state-federal partnership that provides health care services to certain low-income people in the state. California pays half the cost of the program, with the federal government paying for the other half.

Federal law gives the California Department of Health Services (DHS) the responsibility for administering the Medi-Cal program and to review possible fraudulent activity by Medi-Cal beneficiaries and Medi-Cal service providers.<sup>1</sup> When DHS receives a complaint of Medi-Cal fraud or abuse, or identifies questionable practices, DHS must conduct a preliminary investigation to determine whether a full investigation is warranted.

When the findings of a preliminary investigation give DHS reason to believe a beneficiary has committed fraud, DHS begins a full investigation and, if necessary, arrests and prosecutes the offender.

The investigation of Medi-Cal service providers is handled differently. When DHS’ preliminary investigation indicates a provider may have committed fraud, DHS is required to refer the case to the state’s certified fraud control unit for further investigation and, if necessary, prosecution. In accordance with federal regulations and a 1988 Memorandum of Understanding (MOU) between DHS and the DOJ, California’s certified fraud control unit is DOJ.<sup>2</sup>

In reality, however, DHS conducts full investigations of possible fraud by Medi-Cal service providers under the guise of conducting “preliminary investigations” before making referrals to DOJ. DHS has maintained that there is no explicit prohibition for doing so, and that the term “preliminary investigation” has not been adequately defined.<sup>3</sup>

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As a result, there are numerous instances of DHS and DOJ duplicating investigative efforts. This could also lead to instances where potential suspects in one department's case are interviewed as witnesses in the same matter by the other department, thus compromising prosecution of those individuals. Suspects could be prematurely alerted about ongoing criminal investigations, and potential evidence is sometimes compromised.

This has called into question the effectiveness of DHS' anti-fraud efforts. The California Bureau of State Audits noted in a December 2003 report that DHS' failure to clearly identify roles and responsibilities has led to ineffective anti-fraud efforts and that an updated agreement with DOJ could help improve its efforts to investigate and prosecute Medi-Cal providers who commit fraud. The report recommends a new MOU be completed as soon as possible and contains several specific recommendations for developing and implementing a new MOU.<sup>4</sup>

The Legislative Analyst's office, in its analysis of the Governor's Fiscal Year 2004–2005 budget, also addresses the DHS' and DOJ's failure to develop the new MOU.<sup>5</sup>

Although there have been numerous attempts over several years to update the 1988 MOU, still only a draft MOU exists between the departments.<sup>6</sup> The departments say they are close to completing it.<sup>7</sup>

***Additional federal reimbursements available for fraud investigations***

DHS receives about 50 percent reimbursement from the federal government for investigative personnel and operations. DOJ, on the other hand, receives 75 percent reimbursement for its provider fraud personnel and operations.

According to DHS management, the department has assigned 26 fraud investigators to provider fraud. More than 100 personnel are assigned full time to investigate provider fraud complaints. This would amount to a minimum of 74 investigative support personnel such as administrative support, auditors, etc.<sup>8</sup>

If DOJ were to assume responsibility for all Medi-Cal service provider fraud investigations, using the same number of personnel, California would receive an additional \$1.6 million per year in federal reimbursements.

This would have the added benefit of increasing DHS' overall productivity by allowing it to focus solely on fraud perpetrated by beneficiaries.



### **Recommendation**

The California Department of Health Services should complete the Memorandum of Understanding (MOU) with the California Department of Justice (DOJ) by November 1, 2004 and develop criteria in the MOU that allows for the earliest possible transfer of Medi-Cal provider fraud investigations to DOJ.

The MOU should require that DHS refer Medi-Cal provider fraud investigations immediately to DOJ once there is any reason to believe that Medi-Cal provider fraud has occurred. The MOU should also include language that narrows the scope and definition of a preliminary investigation in order to ensure that DOJ is able to undertake Medi-Cal provider fraud investigations at the earliest possible moment.

### **Fiscal Impact**

By using the same number of personnel at DOJ to investigate Medi-Cal provider fraud as DHS currently uses, the state would receive additional federal reimbursement in the amount of \$1.6 million because DOJ's Bureau of Medi-Cal Fraud and Elder Abuse receives a higher percentage of federal reimbursement than DHS (75 percent federal vs. 50 percent federal reimbursement). As the proposed implementation date is September 2004, only partial year amounts are included in FY 2004–2005.

#### **Federal Funds** (dollars in thousands)

| <b>Fiscal Year</b> | <b>Revenue</b> | <b>Costs</b> | <b>Net Savings (Costs)</b> | <b>Change in PYs</b> |
|--------------------|----------------|--------------|----------------------------|----------------------|
| 2004–05            | \$1,200        | \$0          | \$1,200                    | 0                    |
| 2005–06            | \$1,600        | \$0          | \$1,600                    | 0                    |
| 2006–07            | \$1,600        | \$0          | \$1,600                    | 0                    |
| 2007–08            | \$1,600        | \$0          | \$1,600                    | 0                    |
| 2008–09            | \$1,600        | \$0          | \$1,600                    | 0                    |

Note: The dollars and PYs for each year in the above chart reflect the total change for that year from FY 2003–04 expenditures, revenues and PYs.

### **Endnotes**

- <sup>1</sup> Title 42, Code of Federal Regulations.
- <sup>2</sup> Department of Health Services and Department of Justice, "Memorandum of Understanding," Sacramento, California (December 19, 1988).
- <sup>3</sup> Bureau of State Audits (BSA), December 2003, "Department of Health Services: It Needs a Better Plan to Coordinate Its Medi-Cal Antifraud Activities, Report No. 2003-112" (Sacramento, California, December 2003), pp. 42–45.

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- <sup>4</sup> Bureau of State Audits (BSA), “Department of Health Services: It Needs a Better Plan to Coordinate Its Medi-Cal Antifraud Activities, Report No. 2003-112” (December 2003), <http://www.bsa.ca.gov/bsa/summaries/2003-112.html> (last visited June 4, 2004).
- <sup>5</sup> Legislative Analyst’s Office, “Analysis of the 2004–05 Budget Bill—California Medical Assistance Program, Moving California Toward a Model Antifraud Approach” (Sacramento, California, February 2004), [http://www.lao.ca.gov/analysis\\_2004/health\\_ss/hss\\_10\\_4260\\_cmap\\_anl04.htm#\\_Toc64277813](http://www.lao.ca.gov/analysis_2004/health_ss/hss_10_4260_cmap_anl04.htm#_Toc64277813) (last visited June 4, 2004).
- <sup>6</sup> Department of Health Services and Department of Justice, “Memorandum of Understanding” (draft), Sacramento, California (February 16, 2004).
- <sup>7</sup> Interview of Larry Malm, chief, Investigations Branch, Department of Health Services, Sacramento, California (March 8, 2004).
- <sup>8</sup> Interview with Doug Smith, section chief, Audits & Investigations Division, Department of Health Services, Sacramento, California (June 4, 2004). Staffing was confirmed with Doug Smith, actual staffing of 108.5 positions, 13 vacant. The Medi-Cal Fraud Prevention Bureau staff of 22 positions are not included.



# Improving Services to Victims of Crime

## **Summary**

California's Victim Compensation Program and victim/witness assistance centers are the most comprehensive programs for assisting victims of crime in the state. The programs are dependent upon one another but administered separately, resulting in unnecessary duplication of efforts. In addition, funding for the centers has remained the same for the past six years, resulting in an overall decrease in services to victims. These programs should be consolidated and revenue to the state's Restitution Fund should be used to increase funding to victim/witness assistance centers.

## **Background**

California's network of local victim/witness assistance centers (centers) and the state Victim Compensation Program (VCP) are the oldest and most comprehensive delivery systems for crime victim services in California. The first center was established in 1974 and VCP was created in 1967.<sup>1</sup> State law requires the centers to provide a variety of services to victims of all types of crime, and requires VCP to reimburse victims of violent crime for certain crime-related losses.<sup>2</sup>

Each county board of supervisors designates one entity to serve as the county's victim/witness assistance center.<sup>3</sup> There are, therefore, 58 assistance centers in California, although the centers in larger counties have several satellite offices.<sup>4</sup>

## **VCP and center funding and administration**

The centers receive the majority of their funding from commingled state and federal grants. The federal money is derived from Victims of Crime Act (VOCA) grants.<sup>5</sup> The state money comes from penalties levied against criminal offenders.<sup>6</sup> The Victim Compensation Program receives the majority of its funding from the same two sources.<sup>7</sup>

Two different state agencies operate these interrelated programs. The Governor's Office of Emergency Services administers the grant funds to the centers and the Victim Compensation and Government Claims Board administers to VCP.<sup>8</sup> This impairs efficiency, hampers these two programs' ability to take advantage of additional discretionary federal grant funds and is a barrier to effective statewide strategic planning for victim services.

The VCP's ability to effectively serve victims depends on the centers. State law requires centers to assist victims in applying for benefits from VCP.<sup>9</sup> In addition, many centers are authorized to provide emergency benefits on behalf of VCP to victims needing emergency assistance.<sup>10</sup> VCP also contracts with 21 centers to process VCP claims on its behalf.<sup>11</sup> These contracts are renewed annually and totaled \$12 million in Fiscal Year 2002–2003.<sup>12</sup>

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Revenue from state criminal penalties dedicated to supporting VCP is deposited into the State Restitution Fund. Like the centers, the Restitution Fund receives a percentage of state penalty assessments levied against all criminal offenders.<sup>13</sup> Unlike the centers though, the Restitution Fund also receives revenue from restitution fines imposed against offenders convicted of misdemeanor and felony offenses.<sup>14</sup> Revenue from restitution fines increased from \$5 million in FY 1991–1992 to \$57 million annually in FY 2003–2004, primarily because of legislation enacted in 1994 and 1995 mandating minimum restitution fines in every criminal misdemeanor and felony case.<sup>15</sup> The increase in revenue can also be attributed in part to VCP’s efforts to increase collections through statewide outreach, training and revenue recovery efforts targeting criminal justice system entities, which began in 1993.<sup>16</sup>

### ***Improving restitution***

The Victim Compensation Program has focused on increasing the imposition and collection of restitution fine and orders against criminal offenders.<sup>17</sup> The amount of a restitution fine imposed in any particular case varies depending on a variety of specified factors, including the circumstances of the crime.<sup>18</sup>

Restitution fines can range from \$100 to \$1,000 in misdemeanor cases, and from \$100 to \$10,000 in felony cases.<sup>19</sup> Because 96 percent of all misdemeanor and felony cases are settled without a trial, sentencing judges frequently have only a cursory knowledge of the facts of the crime.<sup>20</sup> As a result, in most counties the amount of a restitution fine often does not reflect the gravity of the offense.<sup>21</sup>

VCP has had success in increasing average restitution fine amounts in counties where it funds “restitution specialists.” These “restitution specialists” are in 24 local agencies, many of which are housed in the same county district attorney offices as the local victim/witness assistance centers. Restitution specialists work to provide information to prosecutors and the court that is relevant for determining the appropriate restitution fine and order amounts.<sup>22</sup>

Restitution orders are imposed against offenders and reflect the victim’s actual economic losses incurred as a result of the crime.<sup>23</sup> Victims have a legal right to obtain a restitution order against offenders.<sup>24</sup> VCP is entitled to a restitution order from an offender if it has paid benefits to the victim as a result of the crime. A victim’s right to restitution is frequently overlooked, however, as there is no entity in the criminal justice system responsible for ascertaining a victim’s losses, with the limited exception of restitution specialists.<sup>25</sup>

Like restitution specialists, center staff is in a unique position to provide critical information about the crime’s impact on the victim to prosecutors and the court.<sup>26</sup> Without accurate information, courts cannot impose appropriate restitution fines and orders, which can lead to disparate punishments for offenders from one county to another. For example, offenders convicted of the same crime in two counties may not be required to pay the same amount,





especially if one county routinely provides the court with relevant information about the crime's impact on the victim, and the other one does not.

If centers were to routinely provide crime and victim loss information to courts in every county, restitution to victims and revenue to the Restitution Fund would increase.<sup>27</sup> Judges would be able to impose more appropriate restitution fines and court orders statewide. The centers are not able to provide this information to courts now because they do not have adequate resources.

Funding for victim/witness assistance centers has remained substantially unchanged for six years, despite significant increases in labor and operating costs.<sup>28</sup> The result is a reduction in basic services to victims, resulting in less access to VCP. For example, Los Angeles recently closed four of its centers and Ventura County cut seven center positions because of budgetary constraints.<sup>29</sup>

### ***Combining VCP and center grant administrations***

Combining administration of center grants and VCP would consolidate 105 grants and contracts into about 58, thus reducing administrative costs and streamlining application and reporting costs. In addition, a portion of restitution fines and orders revenue to the Restitution Fund could be statutorily dedicated to the centers. This would provide centers with an incentive to inform prosecutors and the judiciary of facts relevant to determining appropriate restitution fine and order amounts in every case. Increasing resources to the centers is also likely to result in improved services to victims of crime.

For example, if 5 to 10 percent of revenue from restitution fines and orders were to be used to increase funding to the centers, it could provide \$2.9 to \$5.7 million in additional funding to the centers in FY 2005–2006. Based on the average amount VCP currently pays to fund a restitution specialist position, this additional revenue could result in an increase of 47 to 93 center personnel statewide. This would be an increase of 17 to 36 percent in center personnel providing victim services in California.<sup>30</sup>

Additional center staff could provide relevant information about crimes to the criminal justice system in more cases. This could result in increased restitution fine amounts, which would increase revenue to the Restitution Fund. Increased revenue to the Restitution Fund would result in increased funding to the centers and VCP, resulting in improved services to victims of crime.

### ***Recommendations***

- A. The Governor should work with the Legislature to consolidate administration of the Victim/Witness Assistance Program operated by the Office of Emergency Services, or its successor, into the Victim Compensation Program operated by the Victim Compensation and Government Claims Board, or its successor.**

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The agencies responsible for administering these programs, or their successors, should consolidate all state-issued funds to counties for victim/witness assistance centers and restitution specialists, where possible, into one grant per county.

- B. The Governor should work with the Legislature to require victim/witness assistance center personnel to perform the duties of restitution specialists by determining victims' economic losses in all cases, including amounts paid by the Victim Compensation Program.**

The requirement should include, when possible, that the centers' personnel provide this information, along with facts of the crime relevant to determining an appropriate restitution fine, to the prosecuting agency, probation department, court or other appropriate local criminal justice entity prior to an offender's sentencing.

- C. The Governor should work with the Legislature to require that 5 to 10 percent of Restitution Fund revenue from state restitution fines and orders be allocated to victim/witness assistance centers statewide.**

The amount dedicated should only be appropriated when there is a sufficient fund balance in the Restitution Fund to pay projected Victim Compensation Program claims and maintain a prudent reserve. The funds should be combined with other victim/witness assistance center grant funds and made available to the centers through consolidated grants. Once baseline revenue has been established, continued funding should be available contingent upon a county's restitution imposition and collection rates, and other service-related performance measures.

### ***Fiscal Impact***

It is estimated that implementing these recommendations would provide \$2.9 to \$5.7 million to victim/witness assistance centers in FY 2005–2006 with no new General Fund appropriations. This would pay for an additional 47 to 93 center personnel statewide.<sup>31</sup>

Funding would increase annually for the foreseeable future. Projections for FY 2008–2009 are \$3.2 to \$7.0 million in additional funding for the centers. This would pay for 52 to 115 staff and net an additional \$3.2 to \$6.2 million in revenue to the Restitution Fund.<sup>32</sup>



## Endnotes

- <sup>1</sup> Chapter 1546, Statutes of 1967; California Victim and Witness Coordinating Council, "Victim/Witness Assistance Programs in California" (Sacramento, California, March 2004), p. 2 (California's VCP was the first program of its kind in the country and the Alameda County Victim/Witness Assistance Center was one of the first eight centers created simultaneously nationwide in 1974 through the now defunct federal Law Enforcement Assistance Administration (LEAA)).
- <sup>2</sup> Pen. C. Sections 13835.2(a)(1) and 13835.4(d); Gov. C. Section 13951(g).
- <sup>3</sup> Pen. C. Section 13835.2.
- <sup>4</sup> Interview with David Shaw, Deputy Executive Officer, Victim Compensation and Government Claims Board, Sacramento, California (May 24, 2004).
- <sup>5</sup> California Victim and Witness Coordinating Council, "Victim/Witness Assistance Programs in California," (Sacramento, California, March 2004), p. 2; 42 USCA Sections 10601 and 10603.
- <sup>6</sup> Pen. C. Sections 1464(f)(7), 13835.2 and 13835.7.
- <sup>7</sup> Gov. C. Sections 13950(b) and 13964; Pen. C. Section 1464(f)(2); 42 USCA Sections 10601 and 10602.
- <sup>8</sup> Gov. C. Sections 13951(a) and 13952; Pen. C. Sections 13835.7 and 13820(c).
- <sup>9</sup> Pen. C. Section 13835.2(a)(4).
- <sup>10</sup> Gov. C. Section 13952.5(a)(3).
- <sup>11</sup> Gov. C. Section 13954(c).
- <sup>12</sup> Interview with Bettzan Mar, contracts manager, Fiscal and Business Operations Section, Victim Compensation and Government Claims Board, Sacramento, California (May 24, 2004).
- <sup>13</sup> Pen. C. Section 1464(f)(2).
- <sup>14</sup> Pen. C. Section 1202.4(e).
- <sup>15</sup> Chapter 1106, Statutes of 1994 (establishing mandatory minimum restitution fines, although fines were stayed pending successful completion of probation and restitution orders were imposed in lieu of restitution fines); Chapter 313, Statutes of 1995 (eliminating provisions allowing fines to be stayed and restitution orders to be imposed in lieu of restitution fines).
- <sup>16</sup> Interview with Laura Hill, program manager, Revenue Recovery Branch, Victim Compensation and Government Claims Board, Sacramento, California (May 24, 2004); Governor's Budget Fiscal Year 2004–2005.
- <sup>17</sup> Interview with Laura Hill, program manager, Revenue Recovery Branch, Victim Compensation and Government Claims Board, Sacramento, California (May 24, 2004).
- <sup>18</sup> Pen. C. Section 1202.4(d).
- <sup>19</sup> Pen. C. Section 1202.4(b)(1); Welf. & Inst. C. Sections 730.6(b)(1) and 730.6(b)(2).
- <sup>20</sup> Judicial Council of California, "2003 Court Statistics Report," Table 8 (does not apply to juvenile dispositions); interview with David Shaw, deputy executive officer, Revenue Recovery and Appeals Division, Victim Compensation and Government Claims Board, Sacramento, California (May 24, 2004).
- <sup>21</sup> Interview with David Shaw, deputy executive officer, Revenue Recovery and Appeals Division, Victim Compensation and Government Claims Board, Sacramento, California (May 24, 2004).
- <sup>22</sup> Interview with Laura Hill, program manager, Revenue Recovery Branch, Victim Compensation and Government Claims Board, Sacramento, California (May 24, 2004).
- <sup>23</sup> Pen. C. Section 1202.4(f); Welf. & Inst. C. Section 730.6(h).

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- <sup>24</sup> Cal. Const., Art. I, Section 28; Pen. C. Section 1202.4(a)(1); Welf. & Inst. C. Section 730.6(a)(1).
- <sup>25</sup> Interview with David Shaw, deputy executive officer, Revenue Recovery and Appeals Division, Victim Compensation and Government Claims Board, Sacramento, California (May 24, 2004).
- <sup>26</sup> Site visit to San Joaquin Victim/Witness Assistance Center, Stockton, California, March 30, 2004.
- <sup>27</sup> Interview with Laura Hill, program manager, Revenue Recovery Branch, Victim Compensation and Government Claims Board, Sacramento, California (May 24, 2004). According to Laura Hill, Victim Compensation and Government Claims Board data shows that restitution fines increase by an average of \$1,042 per case when a restitution specialist is able to submit relevant data concerning the crime to the court prior to an offender's sentencing.
- <sup>28</sup> Governor's Office of Emergency Services, "Victim/Witness Funding Since 1994" (Sacramento, California, May 2004).
- <sup>29</sup> Letter from Catherine M. Duggan, chairperson, Southern Region Victim/Witness Assistance Programs to Mariaelena Rubick, Victim/Witness Section, Criminal Justice Programs Division, Governor's Office of Emergency Services (May 19, 2004).
- <sup>30</sup> Governor's Office of Emergency Services, "Governor's Office of Emergency Services Criminal Justice Planning Division—Victim/Witness Section Fiscal Year 2003–04 Grant-Funded V/W Advocates," Sacramento, June 2004 (about 257 center staff funded by OES in Fiscal Year 2003–2004); interview with Laura Hill, program manager, Revenue Recovery Branch, Victim Compensation and Government Claims Board, Sacramento, California (May 24, 2004) (VCP funded 38.25 restitution specialist positions in Fiscal Year 2002–2003 for \$2,339,624, which amounts to an average of \$61,167 per position); Governor's FY 2004–05 Budget (projects \$57 million in restitution fine and order revenue deposits to Restitution Fund for Fiscal Year 2003–2004).
- <sup>31</sup> Assumes \$61,167 per position (includes salary plus cost of operating expenses and equipment). The VCP funded 38.25 restitution specialist positions in FY 2002–03 for \$2,339,624, which amounts to an average of \$61,167 per position. \$2.85 million divided by \$61,167 equals 47 positions. \$5.7 million divided by \$61,167 equals 93 positions.
- <sup>32</sup> Assumes an overall collection rate of 32%, with 10% being collected the year a restitution fine is imposed, another 10 percent the year after it is imposed, and 12% the third year after it is imposed. The collection rates are based on the average length of misdemeanor probation, which is three years. It is assumed collection efforts increase as an offender's release from probation nears. This delay between imposition and collection is based on historical collection data provided by Laura Hill, program manager, Revenue Recovery Branch, Victim Compensation and Government Claims Board; assumes \$57 million in restitution fine and order revenue as projected for Fiscal Year 2003–2004 in Governor's Budget for Fiscal Year 2004–2005.



# Make the Victim Compensation Payment Process More Efficient

## **Summary**

Victims of crime are eligible to receive compensation in a timely manner for financial damages that result from a violent crime. The average processing time for a claim is 70 days in Fiscal Year 2003–2004.<sup>1</sup> In January and February 2004, the Victim Compensation Program (VCP) processed 7,714 claims with 578 of these, or 7.5 percent, older than 180 days since receipt.<sup>2</sup> As of May 2, 2004, there are 8,000 claims waiting to be fully processed, with 2,900 of these, or 36 percent, more than 90 days old.<sup>3</sup>

## **Background**

There were 207,988 violent crimes committed in California in 2002.<sup>4</sup> The crime victims and their family members may be eligible for compensation from the state to deal with the emotional, physical and financial aftermath of a crime.<sup>5</sup> Victims apply for assistance with VCP, which is currently located within the Victim Compensation and Government Claims Board.

As far back as 1983, the Legislature recognized that the application process for victim compensation could be “difficult, complex and time-consuming.”<sup>6</sup> Twenty years later, the application has been simplified, but the review process remains complex and time-consuming. To ensure each claim is valid, VCP must work with several organizations, shown in Exhibit 1, to obtain information about the crime.

Every state agency is mandated “to provide the board the information necessary to complete the verification of an application filed” for victim compensation.<sup>7</sup> Most of the requests for information are made concurrently by mail and require claims to sit awaiting responses. The response times vary from one week to six months. In the meantime, the victims wait. On rare occasions, victims’ unpaid bills have gone to collection agencies while the victim waited for the state to finish its review and provide payment, thus causing victims further damage.

As of the date of this report, VCP is analyzing the claims review process to identify work flows that are more efficient and make the best business sense, in preparation for a new web-based system. This claims management information system is expected to be introduced in the fall of 2004 and should streamline the claims process significantly.

VCP review of its internal processing can lead to improvements in the portions of the claim review process over which it has control. Much of the holding time, however, is due to waiting to receive information from others. The state cannot control the private entities involved, but it has the authority to make it easier for state departments to assist each other.

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**EXHIBIT 1**  
**ORGANIZATIONS PROVIDING INFORMATION**  
**TO THE VICTIM COMPENSATION PROGRAM**

| <b>ORGANIZATION</b>               | <b>INFORMATION NEEDED</b>   |
|-----------------------------------|---|
| Law enforcement                   | Crime reports   |
| Hospitals                         | Verification that services provided to victims were crime-related and known reimbursement sources |
| Physicians                        | Verification that services provided to victims were crime-related                                 |
| Mental health providers           | Verification that services provided to victim were necessary and crime-related                    |
| Employers                         | Employment dates and salary for lost wage requests  |
| Employment Development Department | Unemployment or disability insurance payments   |
| Department of Motor Vehicles      | Insurance coverage in auto-involved crimes  |
| Franchise Tax Board               | Tax returns, if victim requests compensation for lost wages                                       |
| Department of Health Services     | Medi-Cal assistance   |
| Department of Social Services     | Verification of public assistance received  |
| A contract bill review service    | Review and reduction of medical bills to allowable rates  |

***Recommendations***

- A. The appropriate Cabinet Secretary, through a policy memo, should direct the state departments identified below, or their successors, to work with the Victim Compensation Program (VCP) to allow VCP staff appropriate access to their information systems.**

Government Code Section 13954(f) mandates that every state agency “shall provide to the board or victim center the information necessary to complete the verification of an application filed pursuant to this chapter” so permission to receive information from other state agencies already exists. Sharing data electronically, rather than by the current manual method, is more efficient. This change will reduce processing time for applications for victim compensation, and will free up staff in other departments who must now respond to VCP requests for information. Eventually, the necessary information can be accessed through the state web portal. While the portal is under development, individual departments from whom VCP requests information should grant VCP direct access to their databases. Those departments are:





- Employment Development Department;
- Department of Motor Vehicles;
- Department of Health Services;
- Franchise Tax Board; and
- Department of Social Services.

**B. While the access issues are being developed, allow existing VCP staff to reside onsite, either part-time or full-time as needed, within each of the departments listed above. These staff would be dedicated solely to obtaining the information needed by VCP to resolve claims.**

### ***Fiscal Impact***

**A. The VCP deputy executive officer states that VCP is able to dedicate staff for implementing Recommendation B.**

The receiving departments, or their successors, should be able to provide space for VCP staff. If necessary, VCP could also loan the departments equipment and supplies originally dedicated to the VCP staff.

Loaning VCP staff to these departments will decrease the departments' workload. A future review can determine if a full-time or part-time position would be needed in each department.

**B. There are no General Fund implications.**

The existing program is funded from two sources: the Restitution Fund composed of fines levied on persons convicted of crimes and traffic offenses in California, and the Victims of Crime Act grant from the Office for Victims of Crime in the U.S. Department of Justice.

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### **Endnotes**

- <sup>1</sup> Victim Compensation Program, "VCP info and charts" April 2004 (computer printout).
- <sup>2</sup> Victim Compensation Program, internal "In and Out" activity reports for January 2004 and February 2004 (computer printouts).
- <sup>3</sup> Interview with Pete Williams, deputy executive officer, Victim Compensation and Government Claims Board (May 7, 2004).
- <sup>4</sup> California State Attorney General's Office, crime statistics, [http://justice.hdcdojnet.state.ca.us/cjsc\\_stats/prof02/00/1.htm](http://justice.hdcdojnet.state.ca.us/cjsc_stats/prof02/00/1.htm) (last visited June 1, 2004).
- <sup>5</sup> Gov. C. Sec. 13950 et seq.
- <sup>6</sup> Pen. C. Sec. 13835.
- <sup>7</sup> Gov. C. Sec. 13954(f).



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**Public Safety**  
**Fiscal Impact Table**  
(Dollars Displayed in Thousands)

| Issue Number | Issue Description  | 2004-05                             |                                    | 2005-06                             |                                    | 2006-07                             |                                    | 2007-08                             |                                    | 2008-09                             |                                    | 5-Year Cum. Total All Funds |
|--------------|--|-------------------------------------|------------------------------------|-------------------------------------|------------------------------------|-------------------------------------|------------------------------------|-------------------------------------|------------------------------------|-------------------------------------|------------------------------------|-----------------------------|
|              |  | Savings(Costs)/Revenue General Fund | Savings(Costs)/Revenue Other Funds | Savings(Costs)/Revenue General Fund | Savings(Costs)/Revenue Other Funds | Savings(Costs)/Revenue General Fund | Savings(Costs)/Revenue Other Funds | Savings(Costs)/Revenue General Fund | Savings(Costs)/Revenue Other Funds | Savings(Costs)/Revenue General Fund | Savings(Costs)/Revenue Other Funds |                             |
| PS 01        | Creating a Department of Public Safety & Homeland Security                                   | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                         |
| PS 02        | Consolidate Law Enforcement Functions to Ensure Public Safety and Homeland Security          | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                         |
| PS 03        | Create a Division of Fire Protection and Emergency Management                                | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                         |
| PS 04        | Consolidate Victim Services  | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                         |
| PS 05        | California Military Department (California National Guard)                                   | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                         |
| PS 06        | Peace Officer Statutory Review   | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                         |
| PS 07        | Information Analysis and Infrastructure Protection Assessment                                | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                         |
| PS 08        | Consolidate the Department of Health Services Medi-Cal Fraud Investigations Branch           | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                         |
| PS 09        | Create a California Hazard Mitigation Advisory Council                                       | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                         |
| PS 10        | Establish a Contingency Fund for the Director of the Governor's Office of Emergency Services | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                                 | CBE                                | CBE                         |

**Public Safety  
Fiscal Impact Table**  
(Dollars Displayed in Thousands)

| Issue<br>Number            | Issue Description  | 2004-05               |                                |  | 2005-06               |                                |  | 2006-07               |                                |  | 2007-08               |                                |  | 2008-09               |                                |  | 5-Year<br>Cum. Total<br>All Funds |
|----------------------------|--|-----------------------|--------------------------------|--|-----------------------|--------------------------------|--|-----------------------|--------------------------------|--|-----------------------|--------------------------------|--|-----------------------|--------------------------------|--|-----------------------------------|
|                            |  | Savings(General Fund) | (Costs)/Revenue<br>Other Funds |  | Savings(General Fund) | (Costs)/Revenue<br>Other Funds |  | Savings(General Fund) | (Costs)/Revenue<br>Other Funds |  | Savings(General Fund) | (Costs)/Revenue<br>Other Funds |  | Savings(General Fund) | (Costs)/Revenue<br>Other Funds |  |                                   |
| PS 11                      | Change Existing Law to Help the Investigations Unit Within the California Employees' Retirement System to Prosecute Disability Fraud Cases | CBE                   | CBE                            |  | CBE                   | CBE                            |  | CBE                   | CBE                            |  | CBE                   | CBE                            |  | CBE                   | CBE                            |  | CBE                               |
| PS 12                      | Medi-Cal Provider Fraud Investigations Should be Done by the California Department of Justice  | CBE                   | \$1,200                        |  | CBE                   | \$1,600                        |  | CBE                   | \$1,600                        |  | CBE                   | \$1,600                        |  | CBE                   | \$1,600                        |  | \$7,600                           |
| PS 13                      | Improving Services to Victims of Crime   | CBE                   | CBE                            |  | CBE                   | CBE                            |  | CBE                   | CBE                            |  | CBE                   | CBE                            |  | CBE                   | CBE                            |  | CBE                               |
| PS 14                      | Make the Victim Compensation Payment Process More Efficient  | CBE                   | CBE                            |  | CBE                   | CBE                            |  | CBE                   | CBE                            |  | CBE                   | CBE                            |  | CBE                   | CBE                            |  | CBE                               |
| <b>Public Safety Total</b> |  | \$0                   | \$1,200                        |  | \$0                   | \$1,600                        |  | \$0                   | \$1,600                        |  | \$0                   | \$1,600                        |  | \$0                   | \$1,600                        |  | \$7,600                           |

The amounts shown for each year in the above chart reflect the total change for that year from Fiscal Year 2003-04

CBE - Cannot Be Estimated